TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 232.

JOSEPH H. WOOD, PLAINTIFF IN ERROR,

vs.

DION BOURCICAULT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED JANUARY 2, 1868.

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1 Pleas in the Circuit Court of the United States for the northern district of Illinois, held at the United States court room, in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, district judge of said district, and in the absence pro tempore of the Hon. David Davis, one of the justices of the Supreme Court of the United States, sole judge of said Circuit Court on Saturday, the thirtieth day of November, in the adjourned October term of said court, in the year of our Lord one thousand eight hundred and sixty-seven, and of our independence the ninety-second year.

WILLIAM H. BRADLEY, *Clerk.*

DION BOURCICAULT
vs.
JOSEPH H. WOOD. } Trespass on the case.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the twenty-sixth day of January, in the year of our Lord one thousand eight hundred and sixty-seven, came Dion Bourcicault, plaintiff, by Messrs. Clarkson & Van Schaack, his attorney, and filed in the office of the clerk of the Circuit
2 Court of the United States for the northern district of Illinois, at Chicago, in said district, his præcipe for a writ of summons against Joseph H. Wood, defendant, and also, at the same time, filed his bond for costs in said entitled cause, which said præcipe and bond are respectively in the words and figures following, to wit:

Circuit Court to the March term, A. D. 1867.

Prœcipe.

DION BOURCICAULT
vs.
JOSEPH H. WOOD. } In damages $5,000 00.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The clerk of said court will issue a summon in the above cause directed to the marshal of said district on a plea of trespass in the case returnable on the first Monday of March, A. D. 1867, to the damage of the plaintiff of five thousand dollars.

Chicago, Jan'y 26, 1887.

CLARKSON & VAN SCHAACK,
Plaintiff's Attorney.

To William H. Bradley, esq., clerk.

3 Endorsed: Filed this 26th day of January, 1967. Wm. H. Bradley, clerk.

REC. 232—1

Circuit Court to the March term, A. D. 1867.

Bond.

DION BOURCICAULT
vs.
JOSEPH H. WOOD. } In.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, we hereby agree and stipulate that execution may issue against our property for any costs taxed against the plaintiff.

Dated this twenty-sixth day of January, A. D. 1867.

CLARKSON & VAN SCHAACK.

Endorsed: Filed this 26th day of January, A. D. 1867. Wm. H. Bradley, clerk.

4 Whereupon a writ of summons issued against said defendant in said entitled cause, which said writ, together with the marshal's return thereon, is in the words and figures following, to wit:

Summons.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you that you summon Joseph H. Wood, if he shall be found in your district, to be and appear before our judges of our Circuit Court of the United States for the northern district of Illinois at the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of March next, to answer unto Dion Bourcicault in a plea of trespass on the case to his damage, as he alleges, of five thousand dollars, and have you then and there this writ.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this twenty-sixth day of January, in the year of our Lord one thousand eight hundred and sixty-seven, and of our independence the

5 91st year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

[50-cts. U. S. int. rev. stamp, canc'ld.]

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Know all men by these presents, that I have appointed, and by these presents do appoint S. H. Tourtellotte my true and lawful deputy to execute the annexed writ, (Dion Bourcicault *vs.* Joseph H. Wood,) and to make true return thereon according to law.

[SEAL.] J. R. JONES,
United States Marshal of the Northern District of Illinois.

I have, this 12th day of February, A. D 1867, executed the annexed writ by reading the same to, and in the presence and hearing of Joseph H. Wood therein named.

J. R. JONES,
United States Marshal of the Northern District of Illinois.
By S. H. TOURTELLOTTE,
Special Deputy.

S. H. Tourtellotte, being first duly sworn, deposes and says that he served the annexed writ as stated in the foregoing return.

Sworn to before me this 13th day of February, A. D. 1867.

P. A. HOYNE, *U. S. Com., N. D. Ill.*

[5-cts. U. S. int. rev. stamp, canc'ld.]

6 Endorsed: Filed March 2d, A. D. 1867. Wm. H. Bradley, clerk.

On this day, to wit, the twenty-second day of February, A. D. 1867, came said plaintiff, by his attorneys, and filed his declaration in said entitled cause, which said declaration is in the words and figures following, to wit:

In the Circuit Court of the United States for the northern district of Illinois. To the March term, A. D. 1867.

Declaration.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Dion Bourcicault, who is an alien and a subject of the Queen of Great Britain, the plaintiff in this suit, by Clarkson & Van Schaack, his attorneys, complains of Joseph H. Wood, who is a citizen of the State of Illinois, and resident in said northern district of Illinois, in a plea of trespass on the case.

1st count. For that whereas the said plaintiff heretofore before the committing of the grievances by the said defendant in this count mentioned, an on to wit, the twenty-fifth day of August, in the year of our Lord one thousand eight hundred and fifty-six, was
7 a resident of the southern district of New York, in the United States of America, and was then and there the author and proprietor of a certain book or dramatic composition designed for public representation, entitled "Andy Blake;" and being such resident, author and proprietor, the said plaintiff, on the day and year last aforesaid, and before the publication of said book or dramatic composition, deposited in the office of the clerk of the District Court of the United States for the said southern district of New York a printed copy of the title of said book or dramatic composition, and afterwards, and within three months from the publication of the same, on, to wit, the fifteenth day of January, A. D. 1857, caused a copy of said book or dramatic composition to be delivered to the clerk of said southern district of New York, and also caused to be inserted in print on the title page of each published copy of the said

book or dramatic composition the words, "Entered according to act of Congress, in the year one thousand eight hundred and fifty-six, by Dion Bourcicault, in the clerk's office of the District Court of the United States for the southern district of New York." By reason whereof, and by force of the statutes in such case made and provided, the said plaintiff acquired, and had, and now has, the copyright of the said dramatic composition, and the sole right to print, publish, and vend the same in whole or in part, and
8 also the sole right to act, perform, or represent, or cause to be acted, performed, or represented on any stage or public place the said dramatic composition, for the term of twenty-eight years from the said 25th day of August, A. D. 1856;

And whereas, also, the said defendant, at the days and times in this count hereafter particularly specified, and at each of them, was the proprietor or manager of a certain place of exhibition and amusement, in Chicago, in said district, known as "Wood's Museum," and was accustomed therein to represent, or cause to be represented, publicly upon the stage, by a theatrical company, various plays and dramas;

Yet the said defendant, well knowing the premises, and that the said plaintiff owned and held the copyright, as aforesaid, of said dramatic composition, but contriving, and wrongfully and injuriously intending to injure the said plaintiff, and to deprive him of the profits, emoluments, and advantages which he might and otherwise would have derived and acquired from the representation of said "Andy Blake," and also to deprive him of the benefit of his said copyright heretofore and after the passage of the act of Congress, entitled "An act supplemental to an act entitled 'An act to amend the several acts respecting copyrigts,' approved February third,
9 eighteen hundred and thirty-one," approved August 18th, A. D. 1856, on, to wit, the days and times now following, namely, on the first and sixth days of September, A. D. 1864, and in the seventeenth, eighteenth, and twenty-sixth days of December, A. D. 1866, and on divers other days and times between the said first day of September, A. D. 1864, and the day of the commencement of this suit, wrongfully and injuriously, and without and against the consent of said plaintiff, caused to be acted, performed, and represented publicly upon the stage at and in said "Wood's Museum," the said play or dramatic composition of "Andy Blake," to the great injury of the said plaintiff, and contrary to the statute in such cases made and provided, by means whereof the said plaintiff hath been and is greatly injured, and deprived of the profits which would have otherwise accrued to him from the representation of said play, and his copyright therein hath been and is greatly injured and damnified, to wit, at the district aforesaid.

2d count. For that whereas the said plaintiff heretofore before the committing of grievances by the said defendant in this count mentioned, and on, to wit, the second day of September, in the year of our Lord one thousand eight hundred and fifty-eight, was a resident of the southern district of New York, in the United States of

America, and was then and there the author and proprietor of a certain book or dramatic composition, designed for public
10 representation, entitled "Pauvrette;" and, being such resident author and proprietor, the said plaintiff, on the day and year last aforesaid, and before the publication of said book or dramatic composition, deposited in the office of the clerk of the District Court of the United States for the said southern district of New York a printed copy of the title of said book or dramatic composition, and afterwards, and within three months from the publication of the same, on, to wit, the sixth day of October, A. D. 1858, caused a copy of said book or dramatic composition to be delivered to the clerk of said southern district of New York, and also caused to be inserted in print on the title page of each published copy of said book or dramatic composition the words, "Entered according to act of Congress, in the year one thousand eight hundred and fifty-eight, by Dion Bourcicault, in the clerk's office of the District Court of the United States for the southern district of New York." By reason whereof, and by force of the statutes in such case made and provided, the said plaintiff acquired, had, and now has the copyright of the said dramatic composition, and the sole right to print, publish, and vend the same in whole or in part, and also the sole right to act, perform, or represent, or cause to be acted, performed, or represented on any stage or public place the said dramatic composition for the term of twenty-eight years from the said second
11 day of September, A. D. 1858;

And whereas, also, the said defendant, at the days and times in this count hereafter particularly specified, and at each of them, was the proprietor or manager of a certain place of exhibion and amusement, in Chicago, in said district, known as "Wood's Museum," and was accustomed therein to represent, or cause to be represented, publicly upon the stage, by a theatrical company, various plays and dramas;

Yet the said defendant, well knowing the premises, and that the said plaintiff owned and held the copyright, as aforesaid, of said dramatic composition, but contriving, and wrongfully and injuriously intending to injure the said plaintiff, and to deprive him of the profits, emoluments, and advantages which he might and otherwise would have derived and acquired from the representation of said "Pavorette," and also to deprive him of the benefit of his said copyright heretofore and after the passage of the act of Congress entitled "An act supplemental to an act entitled 'An act to amend the several acts respecting copyrights,' approved February third, eighteen hundred and thirty-one," approved August 18th, A. D. 1856, on, to wit, the days and times now following, namely, on the fifth, sixth, seventh, eighth, ninth, tenth, twelfth, thirteenth, fourteenth, and fifteenth days of November, A. D. 1866, and on divers other days and times, between the fifth day of November,
12 A. D. 1866, and the day of the commencement of this suit, wrongfully and injuriously, and without and against the consent of the said plaintiff, caused to be acted, performed and repre-

sented publicly upon the stage at and in said "Wood's Museum," the said play or dramatic composition of "Pauvrette," by the name, style, or description of "The Avalanche, or Under the Snow," to the great injury of the said plaintiff, and contrary to the statutes in such cases made and provided, by means whereof the said plaintiff hath been and is greatly injured and deprived of the profits which would have otherwise accrued to him from the representation of said play, and his said copyright therein hath been and is greatly injured and damnified, to wit, at the district aforesaid.

3d count. And for that whereas also the said plaintiff heretofore, on, to wit, the twelfth day of December, A. D. 1859, was a resident of the southern district of New York, in the United States of America, and was then and there the author and proprietor of a certain book, play, or dramatic composition designed for public representation entitled "The Octoroon, or Life in Louisiana," and being such resident, author and proprietor, did on the day and year last aforesaid deposit in the office of the clerk of the said District Court of the United States for the said southern district of New York a printed copy of the title of said play or dramatic composition, which said play or dramatic composition had not before then been
13 published, and has not since then hitherto at any time been published in print by or with the consent of the said plaintiff, by means whereof, and by force of the statute in such case made and provided, the said plaintiff secured to himself a copyright of said play or dramotic composition, and then acquired and had and now has the sole right to print, publish, and vend the said play or dramatic composition, in whole or in part, and also the sole right to act, perform, or represent, or cause to be acted, performed, or represented on any stage or public place the said play or dramatic composition, for the term of twenty-eight years from the said twelfth day of December, A. D. 1859;

And whereas also the said defendant, at the days and times in this count hereafter particularly specified, and at each of them, was the proprietor or manager of a certain place of exhibition and amusement in Chicago, in said district, known as "Wood's Museum," and was accustomed therein to represent, or cause to be represented, publicly upon the stage by a theatrical company various plays and dramas;

Yet the said defendant, well knowing the premises, and that the said plaintiff owned and held the said copyright as aforesaid of said dramatic composition, but contriving, and wrongfully and injuriously intending to injure the said plaintiff, and to deprive him of the profits, emoluments and advantages which he might and
14 otherwise would have derived and acquired from the representation of said "Octoroon, or Life in Louisiana," and also to deprive him of the benefit of said copyright heretofore and after the passage of the act of Congress entitled "An act supplemental to an act entitled 'An act to amend the several acts respecting copyrights,' approved February third, eighteen hundred and thirty-one," approved August 18th, A. D. 1856, on, to wit,

the days and times now following, namely, on the seventh, eighth, ninth, tenth, eleventh, and twelfth days of May, A. D. 1866, and on divers other days and times between said first day of May, A. D. 1866, and the day of the commencement of this suit, wrongfully and injuriously, and without and against the consent of the said plaintiff, caused to be acted, performed, and represented publicly upon the stage, at and in said "Wood's Museum," the said play or dramatic composition of the "Octoroon, or Life in Louisiana," to the great injury of the said plaintiff, and contrary to the statute in such cases made and provided, by means whereof the said plaintiff hath been and is greatly injured and deprived of the profits which would otherwise have accrued to him from the representation of said play, and his said copyright therein hath been and is greatly injured and damnified, to wit, at the district aforesaid.

4th count. And for that whereas also the said plaintiff here-
15 tofore, on to wit, the twenty-third day of March, A. D. 1860, was a resident of the southern district of New York, in the United States of America, and was then and there the author and proprietor of a certain book, play, or dramatic composition, designed for public representation, entitled "The Colleen Bawn, or the Brides of Garryowen," and being such resident, author, and proprietor, did, on the day and year last aforesaid, deposit in the office of the clerk of the District Court of the United States for the said southern district of New York, a printed copy of the title of the said play or dramatic composition, which said play or dramatic composition had not before then been published, and has not since then hitherto at any time been published in print, by or with the consent of the said plaintiff, by means whereof and by force of the statute in such cases made and provided, the said plaintiff secured to himself a copyright of said play or dramatic composition, and then acquired and had, and now has the sole right to print, and publish and vend the said play or dramatic composition, in whole or in part, and also the sole right to act, perform, or represent, or cause to be acted, performed, or represented on any stage or public place, the said play or dramatic composition, for the term of twenty-eight years from the said 23d day of March, A. D. 1860;

And whereas also the said defendant, at the days and times in this
16 count hereafter particularly specified, and at each of them, was the proprietor or manager of a certain place of exhibition and amusement in Chicago, in said district, known as "Wood's Museum," and was accustomed therein to represent, or cause to be represented publicly, upon the stage, by a theatrical company, various plays and dramas; yet the said defendant, well knowing the premises, and that the said plaintiff owned and held the copyright as aforesaid of said dramatic composition, but contriving and wrongfully and injuriously intending to injure the said plaintiff, and to deprive him of the profits, emoluments and advantages which he might and otherwise would have derived and acquired from the representation of said "The Colleen Bawn, or the Brides of Garryowen, and also to deprive him of the benefit of his said copyright,

heretofore and after the passage of the act of Congress entitled "An act supplemental to an act entitled 'An act to amend the several acts respecting copyrights,' approved February third, eighteen hundred and thirty-one," approved August 18th, 1856, on, to wit, the days and times now following, namely, on the thirty-first day of October, and on the first, second, third, fourth, fifth, seventh, eighth, ninth, tenth, eleventh and twelfth days of November, A. D. 1864, and on the nineteenth, twentieth and twenty-first days of October, 1865, and on the fourth day of January and the seventeenth and twenty-third days of March, A. D. 1866, and on divers other days and times between the nineteenth day of October, A. D. 1865, and the day of the
17 commencement of this suit, wrongfully and injuriously, without and against the consent of the said plaintiff, caused to be acted, performed and represented publicly, upon the stage, at and in said "Wood's Museum," the said play or dramatic composition of "The Colleen Bawn, or the Brides of Garryowen," to the great injury of the said plaintiff, and contrary to the statute in such cases made and provided, by means whereof the said plaintiff hath been and is greatly injured, and deprived of the profits which would have otherwise accrued to him from the representation of said play, and his said copyright therein hath been and is greatly injured and damnified, to wit, at the district aforesaid.

5th count. And for that whereas also the said plaintiff, before and at the time of the committing by the said defendant of the grievances hereinafter mentioned, was the author and proprietor of a certain play or dramatic composition styled "The Colleen Bawn, or the Brides of Garryowen," which had been composed and written by the said plaintiff, and designed for representation upon the stage, and the representation of which had before then been, and was, during the time of the committing of the grievances hereinafter mentioned by the said defendant, a source of great gain and profit to the said plaintiff; and whereas also the said play or dramatic composition had not, prior to, nor at the time of the wrongful acts of the said de-
18 fendant, hereinafter mentioned, and has not, at any time since then hitherto been published by the said plaintiff in print, nor in any manner generally given to the public, other than by its representation on the stage at divers times and places, by or by the authority and consent of the said plaintiff, and for certain hire or compensation to him therefor paid, but has continued to be, and still is, the property of the said plaintiff, and exclusively owned by him;

And whereas, also, the said defendant, at the time of the committing of the grievance hereinafter mentioned, was the manager and proprietor of a certain place of public amusement known as "Woods Museum," at Chicago, in said northern district of Illinois, which said museum, was used by the said defendant, amongst other purposes, for the purpose of publicly producing, acting, performing and representing therein upon a stage, with and by a theatrical company, by him engaged for that purpose, divers plays and dramatic pieces for profit to him in that behalf;

Yet the said defendant, well knowing the premises, but contriving

and intending to injure the said plaintiff and to deprive him of his said exclusive right of authorship and proprietorship in and to said play, and of the profits and emoluments, which he otherwise might and would have derived from the representation of the same upon the stage, wrongfully and without and against the authority and consent of the said plaintiff, and without having been enabled so to
19 do through any impression made by the representation of said play, at any time or times upon the memory of the said defendant, or of any of the audience of said play, but solely through and by means of a manuscript copy of the same, wrongfully and surreptitiously obtained by the said defendant, on, to wit, the thirty-first day of October, A. D. 1864, and on divers, to wit, twenty-five days and times between that day and the day of the commencement of this suit, caused the said play the "Coleen Bawn" to be acted, performed and represented upon the stage publicly, by his said theatrical company, at and in said "Wood's Museum," to large audiences, for certain compensation by them to him paid therefor, and thereby, then and there, derived and realized great gains and profits to him the said defendant, by means whereof the said plaintiff hath been and is greatly injured and damnified, and hath been and is deprived of divers great gains and profits which otherwise would have accrued to him from the representation of said play, to wit, at the district aforesaid.

6th count. And for that whereas also the said plaintiff, before and at the time of the committing by the said defendant of the grievances hereinafter mentioned, was the author and proprietor of a certain play or dramatic composition styled "The Octoroon, or Life in Louisiana," which had been composed and written by the said plaintiff and designed for representation upon the stage, and the representa-
20 tion of which had before then been, and was during the time of the committing of the grievances hereinafter mentioned by the said defendant, a source of great gain and profit to the said plaintiff; and whereas also, the said play or dramatic composition had not, prior to nor at the time of the wrongful acts of the said defendant hereinafter mentioned, and has not at any time since then, hitherto been published by the said plaintiff in print, nor in any manner generally given to the public, other than by its representation on the stage at divers times and places, by or by the authority and consent of the said plaintiff and for certain hire or compensation to him therefor paid, but has continued to be, and still is, the property of the said plaintiff and exclusively owned by him. And whereas, also, the said defendant, at the time of the committing of the grievances hereinafter mentioned, was the manager and proprietor of a certain place of public amusement known as "Wood's Museum," at Chicago, in said northern district of Illinois, which said museum was used by the said defendant, amongst other purposes, for the purpose of publicly producing, acting, performing or representing therein upon a stage, with and by a theatrical company, by him engaged for that purpose, divers plays and dramatic pieces, for profits to him in that behalf; yet the said defendant, well knowing the premises, but contriving

and intending to injure the said plaintiff and to deprive him of his said exclusive right of authorship and proprietorship in and to
21 said play and of the profits and emoluments which he otherwise might and would have derived from the representation of the same upon the stage, wrongfully and without and against the authority and consent of the said plaintiff, and without having been enabled so to do through any impression made by the representation of said play at any time or times, upon the memory of said defendant, or of any of the audience of said play, but solely through and by means of a manuscript copy of the same, wrongfully and surreptitiously obtained by the said defendant, on, to wit, the seventh day of May, A. D. 1866, and on divers, to wit, ten days and times between that day and the day of the commencement of the suit, caused the said play, "The Octoroon," to be acted, performed and represented upon the stage, publicly by his said theatrical company, at and in said "Wood's Museum," to large audiences, for certain compensation by them to him paid therefor, and thereby then and there derived and realized great gains and profits to him the said defendant, by means whereof the said plaintiff hath been and is greatly injured and damnified, and hath been and is deprived of divers great gains and profits, which otherwise would have accrued to him from the representation of said play, to wit, at the district aforesaid, to the damage of the said plaintiff in the sum of five thousand dollars, and therefore he brings this suit, &c.

CLARKSON & VAN SCHAACK,
Pl'ff's Atty's.

22 Endorsed: Filed Feb'y 22d, 1867. Wm. H. Bradley, c'lk.

On this day, to wit, the sixth day of March, A. D. 1867, said defendant, by his attorneys, filed in said clerk's office his plea in said entitled cause, which is in the words and figures following, to wit:

Circuit Court of the United States for the northern district of Illinois, of the March term, 1867.

Plea.

JOSEPH H. WOOD
adsm.
DION BOURCICAULT.

NORTHERN DISTRICT OF ILLINOIS, *ss*:

And the said defendant, by Scates, Bates and Towslee, his attorneys, comes and defends the wrong and injury when, &c., and says that he is not guilty in manner and form as the said plaintiff hath in his said declaration charged against him, and of this he puts himself on the country; and the plaintiff doeth the like.

SCATES, BATES & TOWSLEE,
Def't's Atty's.

Endorsed: Filed March 6, 1867. Wm. H. Bradley, clk.

23 *Notice.*

On this day, to wit, the 11th day of July, A. D. 1867, came said defendant, by his attorneys, and filed in said clerk's office his notice in said entitled cause, and which said notice is in the words and figures following, to wit:

Circuit Court of United States for the northern district of Illinois.

JOSEPH H. WOOD
adsm.
DION BOURCICAULT.

Take notice that the defendant in the above entitled cause will give in evidence under the general issue filed therein on the trial thereof, in bar of said plaintiff's action.

1°. That the plaintiff is now and always has been an alien, and was not at any time, or at the time of the taking out of the copyright of said plays, or either of them, described in the plaintiff's declaration a "resident alien," residing here in the United States permanently and has not, and never has declared his intention to become a citizen of the United States, and was not entitled to a copyright under the laws of the United States.

24 2°. That the said plaintiff was long time prior to the commencement of this suit declared a bankrupt under the laws of Great Britain, in England, where he, def't, resided, and still resides, and thereby all his interest in and to the said plays described in the plaintiff's declaration has passed to and become vested in the assignee in bankruptcy of said defendant.

3°. That no action was brought for the violation of the copyright set forth in the plaintiff's declaration within two years after the cause of action arose, according to the provision of the act of 1837.

4°. That the plaintiff was not the author of the said plays described in the declaration, but the same were simply old plays, remodeled and rearranged by him.

5°. That the plaintiff abandoned all rights and interests under his copyrights, if any he has ever had, by permitting the said plays to be published at large, sold at all the book stores of the land, and played and performed by all the theatres without any act of restraint or injunction on his part, for the last five years and upwards, preceeding their performance by defendant.

25 6°. That no suit or action has been commenced by plaintiff against def't for the cause or causes of action set forth in said declaration in favor of the plaintiff, for a violation of the supposed copyright above described, within two years after the alleged violation thereof, as is required by the statute of 1831.

SCATES, BATES, TOWSLEE,
Att'ys for Def'ts.

Endorsed: Filed July 11th, 1867. Wm. H. Bradley, cl'k.

26 In the Circuit Court of the United States for the northern district of Illinois.

Amendment to decl'n.

DION BOURCICAULT }
vs.
JOSEPH H. WOOD. }

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

And now comes the said plaintiff, by leave of court first had and obtained, and files these his additional counts to the declaration heretofore filed in this cause.

Dion Bourcicault, who is an alien, and a subject of the Queen of Great Britian, the plaintiff in this suit, by Clarkson & Van Schaack, his attorneys, complains of Joseph H. Wood, who is a citizen of the State of Illinois, and resident in said northern district of Illinois, in a plea of trespass on the case.

7th count. And for that whereas also the said plaintiff, before and at the time of the committing by the said defendant of the grievances hereinafter mentioned, was the author and proprietor of a certain play or dramatic composition, styled "The Colleen Bawn,
27 or the Brides of Garryowen," which had been composed and written by the said plaintiff, and designed for representation upon the stage, and the representation of which had before then been, and was during the time of the committing of the grievances hereinafter mentioned by said defendant, a source of great gain and profit to [to] the said plaintiff; and whereas, also, the said play or dramatic composition had not, prior to nor at the time of the wrongfull acts of the defendant hereinafter mentioned, and has not any time since then hitherto been published by the said plaintiff in print, nor in any manner generally given to the public, other than by its representation on the stage, at divers times and places, by or by the authority and consent of the said plaintiff, and for certain hire or compensation to him therefor paid, but has continued to be, and still is, the property of the said plaintiff, and exclusively owned by him;

And whereas, also, the said defendant, at the time of the committing of the said grievances hereinafter mentioned, was the manager and proprietor of a certain place of public amusement, known as Wood's Museum, at Chicago, in said northern district of Illi-
28 nois, which said museum was used by the said defendant, amongst other purposes, for the purposes of publicly producing, acting, performing, or representing therein upon a stage, with and by a theatrical company, by him engaged for that purpose, divers plays and dramatic pieces, for profit to him in that behalf;

Yet the said defendant, well knowing the premises, and intending to injure the said plaintiff, and to deprive him of his said exclusive right of authorship and proprietorship in and to said plays, and of the profits and emoluments which he otherwise might and would have derived from the representation of the same upon the stage,

wrongfully, and without and against the authority and consent of the said plaintiff, and without having been enabled so to do through any impression made by the representation of said play at any time or times upon the memory of the said defendant, or of any of the audience of said play, but solely through and by means of a copy of the same which had been before then, and was wrongfully and surreptiously, and without the knowledge or consent of the
29 plaintiff, printed by some one unknown to the said plaintiff, and which had been and was wrongfully and surreptiously obtained by the said defendant from some one unknown to the said plaintiff, and without his knowledge or consent, on, to wit, the thirty-first day of October, A. D. 1864, and on divers, to wit, twenty-five days and times between that day and the day of the commencement of this suit, caused the said play, "The Colleen Bawn," to be acted, performed, and represented upon the stage, publicly, by his said theatrical company, at and in said "Wood's Museum," to large audiences, for certain compensation by them to him paid therefor, and thereby then and there derived and realized great gains and profits to him the said defendant, by means whereof the said plaintiff hath been and is greatly injured and damnified, and hath been and is deprived of divers great gains and profits, which otherwise would have accrued to him from the representation of said play, to wit, at the district aforesaid.

8th count. And for that whereas the said plaintiff, before and at the time of the committing by the said defendant of the
30 grievances hereinafter mentioned, was the author and proprietor of a certain play or dramatic composition styled the "Octoroon, or Life in Louisiana," which had been composed and written by the said plaintiff, and designed for representation upon the stage, and the representation of which had before then been, and was during the time of the committing of the grievances hereinafter mentioned by the said defendant, a source of great gain and profit to the said plaintiff; and whereas also the said play or dramatic composition had not prior to nor at the time of the wrongful acts of the defendant hereinafter mentioned, and has not any time since then hitherto been published by the said plaintiff in print, nor in any manner generally given to the public, other than by its representation on the stage, at divers times and places, by or by the authority and consent of the said plaintiff, and for certain hire or compensation to him therefor paid, but has continued to be and still is the property of the said plaintiff, and exclusively owned by him;

And whereas also the said defendant, at the time of the committing of the grievances hereinafter mentioned, was the manager and proprietor of a certain place of public amusement known as
31 Wood's Museum, at Chicago, in said northern district of Illinois, which said museum was used by the said defendent, amongst other purposes, for the purpose of publickly producing, acting, performing, or representing therein upon a stage, with and by a theatrical company by him engaged for that purpose, divers plays and dramatic pieces for profit to him in that behalf;

Yet the said defendant, well knowing the premises, and intending to injure the said plaintiff, and to deprive him of his said exclusive right of authorship and proprietorship in and to said plays, and of the profits and emoluments which he otherwise might and would have derived from the representation of the same upon the stage, wrongfully, and without and against the authority and consent of the said plaintiff, and without having been enabled so to do through any impression made by the representation of said play at any time or times upon the memory of the said defendant or of any of the audience of the said play, but solely through and by means of a copy of the same which had been before then, and was wrongfully
32 and surreptiously, and without the knowledge or consent of the plaintiff, printed by some one unknown to the said plaintiff, and which had been and was wrongfully and surreptiously obtained by the said defendant from some one unknown to the said plaintiff, and without his knowledge or consent, on, to wit, the seventh day May, A. D. 1866, and on divers, to wit, ten days and times between that day and the day of the commencement of this suit, caused the said play, "The Octoroon," to be acted, performed, represented upon the stage publickly by his said theatrical company at and in said "Wood's Museum" to large audiences, for certain compensation by them to him paid therefor, and thereby then and there derived and realised great gains and profits to him, the said defendant, by means whereof the said plaintiff hath been and is greatly injured and damnified, and hath been and is deprived of divers great gains and profits, which otherwise would have accrued to him from the representation of said play, to wit, at the district aforesaid, to the damage of the said plaintiff in the sum of five thousand dollars, and therefor he brings his suit, &c.

CLARKSON & VAN SCHAACK,
Plff's Att'ys.

33 Endorsed: Filed Oct. 29th, 1567. Wm. Bradley, cl'k.

On this day, to wit, the 29th day of October, in the adjourned October term, A. D. 1867, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

DION BOURCICAULT
vs.
JOSEPH H. WOOD. } Trespass on the case.

On motion of the plaintiff, by his attorney, leave is given him by the court to file amendments to his declaration, and to enter a nolle prosequi as to the first count of his original declaration; the plea of the general issue heretofore filed to stand without any further answer or plea to the amendments filed to the declaration. And now come the parties by their attorneys, and upon issue joined thereupon come a jury of good and lawful men, to wit: A. L. Brumfield, H. H. Hildreth, Edwin Cubley, J. R. Gaskins, J. B. Eaman, Willard Murdock, Wil-

liam Griffin, E. N. Tucker, T. Holbrook, William Mitchell,
34 Andrew Cress, and C. H. Kloth, who were all duly elected, tried and sworn well and truly to try said issue, and after hearing the opening statements of counsel, the hour of adjournment having arrived, the further trial of the cause is postponed until to-morrow morning.

On the next day, to wit, the 30th day of October, in said October term, A. D. 1867, of said court, in the record of the proceedings thereof, in said entitled cause is the following entry, to wit:

DION BOURCICAULT
vs. } Trespass on the case.
JOSEPH H. WOOD.

Now come again the parties, by their attorneys, and now come also the jury in this behalf empaneled and sworn, and after hearing a part of the evidence, by agreement of the parties, by their attorneys, C. H. Kloth is excused from further attendance as a juror herein, the trial to proceed with the eleven jurors, and their verdict to have the same force and effect as though rendered by a full pannel; and after hearing the concluding evidence and a part of the arguments of counsel, the hour of adjournment having arrived,
35 the further trial of the cause is postponed until to-morrow morning.

On this day, to wit, the 31st day of October, in the adjourned October term, A. D. 1867, of said court, in the record of the proceedings thereof, in said entitled cause is the following entry, to wit:

DION BOURCICAULT
vs. } Trespass on the case.
JOSEPH H. WOOD.

Now come again the parties, by their attorneys, and now comes also the jurors in this behalf empanneled and sworn, and after hearing the concluding arguments of counsel, and receiving the instructions of the court, the jurors retire to consider of their verdict, and by agreement of the parties, by their attorneys, the jurors, when they shall have agreed upon a verdict, may sign and seal the same, and deliver it to the clerk, and disperse.

36 On this day, to wit, the 1st day of November, in the adjourned October term, A. D. 1867, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

DION BOURCICAULT
vs. } Trespass on the case.
JOSEPH H. WOOD.

The eleven jurors in this behalf empanneled and sworn this day returned into court the following verdict, to wit: We, the said jurors,

find the defendant guilty, and assess the plaintiff's damages to the sum of nine hundred dollars. And thereupon the defendant, by his attorney, moves the court for a new trial herein, and in arrest of judgment.

On the hearing of said cause, the following exceptions were taken, and were allowed by the court, and are in words and figures following, to wit:

37 In the Circuit Court of the United States for the northern district of Illinois, Term A. D. 1867.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Be it remembered that on the trial of this cause, at the term of said court, A. D. 1867, before a jury, Hon. Thomas Drummond presiding as judge, the plaintiff to maintain the issue upon his part introduced the following testimony:

Robert Hervey, a witness called on behalf of the plaintiff, being duly sworn, was examined in chief by Mr. Clarkson, and testified as follows:

38 Ques. Do you know Dion Bourcicault, the plaintiff in this suit? If you do, state.

Ans. I do, sir.

Ques. State how long you have known him, and under what circumstances you made his acquaintance, when and where.

Ans. I know Mr. Bourcicault, the plaintiff in this suit; I have known him since the latter part of the year 1853, or the early part of 1854; I made his acquaintance in this city; I was introduced to him, I believe, by Mr. Rice, the present mayor of this city.

Ques. Had you any connection or relation with him, from that time on? If you had, state of what character, and for how long.

Ans. In the early part of 1854, the legal firm of which I was then a member, composed of yourself and myself, were the attorneys and agents of Mr. Bourcicault, from May or June, '54, when he purchased some property in the city, up to the time of the dissolution of partnership, in October, 1856. During that time, we had frequent interviews with him, and a great deal of correspondence by letter.

39 Ques. After that date, had you any further connection with him, and if so, of what character, and up to what time?

Ans. After the dissolution of our firm, in October, 1856, I individually continued to act as agent for and attorney for Mr. Bourcicault, down to the 23rd day of June, 1857, when I paid him a balance of $290 which I had in my hands, and his account was closed; and since then I have had no business transactions with him.

Ques. Where did Mr. Bourcicault reside during the time that you knew him, and where did he reside in the latter part of 1856, and where in '57, when you closed your correspondence with him?

Ans. During the correspondence of Hervey and Clarkson with him,

he was all over the United States. We had addressed him at New York, Philadelphia, Baltimore, Washington, Boston, Saint Louis, New Orleans, at various times wherein he happened to be; he advised us where he was, and the letters, correspondence, was addressed to these points, and I find, in referring to the letter-book
40 of the late firm of Hervey & Clarkson, that letters were addressed to him at those various places in the United States. I find no correspondence with him at any point outside of the United States.

Ques. Where did he reside in October, 1856, and where, after that time, in '57—the time after you closed your correspondence with him?

Ans. I don't know where he resided in October, 1856. I know in December of 1856 I commenced individually to act for him, and he then resided in 13th street, I think it was 13th street, in the city of New York, and down to the time of the close of my business or connection with him, he resided there; that was his home.

Ques. What was, and is now, if you know, Bourcicault's profession? What was it at that time, and what is it now?

Ans. It was at that time, and is now, as far as I know, that of a dramatic author, and also an actor. He has been, and is now, I believe, in England, manager of a theatre.

Ques. Were you acquainted with his wife during the time that you did business for Bourcicault?

41 Ans. I have that pleasure, sir.

Ques. By what name was she known in this country?

Ans. As Miss Aagnes Robertson, and also Mrs. Bourcicault. Her stage name was Miss Agnes Robertson.

Ques. Are you acquainted with Mr. Bourcicault's plays?

Ans. Yes, sir, I am.

Ques. State which ones.

Ans. I am acquainted with the "Corsican Brothers," I am acquainted with "Used Up," with "Old Heads and Young Hearts," with "Andy Blake," and with the "Colleen Bawn," "Arrah Na Pogue," and the "Octoroon;" and there are others, Mr. Clarkson, that I don't recollect; but there are some of them with which I am partly acquainted.

Ques. Is he a prolific writer, do you know, sir?

Ans. Quite so; perhaps the most so of the profession.

Ques. Have you ever seen the plays of the "Octoroon" and the "Colleen Bawn" represented upon the stage, any where?

Ans. Yes, sir; seen them both represented.

Ques. Do you recollect the character of the play of the "Oc-
42 toroon," what it is about—what it is?

Ans. Yes, sir.

Ques. Can you state to the jury what the basis of the play is—its salient points that it represents?

Ans. I can't state; I never saw it played but once, I think, and that was at the McVickar's theatre, in this city. I can't undertake to give the plot, or even the characters of the play. It purports to

delineate life in Louisiana, I believe. What the characters are in the play, I would not pretend to give.

Ques. What is the Colleen Bawn?

Ans. That is an Irish play; that I have also seen represented, I think, at McVickar's theatre too.

Ques. Were your relations to Mr. Bourcicault and his wife—known as Miss Agnes Robertson—during your connection with him, had you any other relations or connection with him than those of a mere professional character?

Ans. Well, I should say I had; I should say I was personally intimate with both Mr. and Mrs. Bourcicault. Mrs. Bourcicault is a
43 country woman of mine; she is an Edinburgh girl, and she was, when I first knew her, an unmarried lady, and I became considerably intimate with both her and her husband. My relations with them are not at all, in any respects, entirely professional; I should consider myself a friend, as well as an agent and counsellor.

Ques. Do you know whether or not Mr. Bourcicault made any investment, during the time you were with him in this city, in real estate?

Ans. The time I was with him?

Ques. Connected with him professionally, while you and I were professionally connected with him.

Ans. He did. It was not out of these investments these professional connections arose. We paid his taxes, and did his business for him, in his absence, as he was very seldom here; he was around through the country most of the time.

Ques. Are you sure whether Mr. Bourcicault still owns that real estate or not?

Ans. I don't know whether he does or not; I know some of it was sold, but whether he owns any or not I don't know.

44 Ques. In the course of your connections or relations of a professional character, and otherwise, you say you had with Mr. and Mrs. Bourcicault, do you recollect at any time after he came, or about the time he came to this country, to make these investments, having any conversations with him relative to his intentions when he came to this country—what his intentions were, at the time he came to this country, as to a residence?

(Objected to.)

The Court. My impression is you may show his declarations accompanying his acts. It would be often difficult to establish the intentions of the party except by such declarations.

(To which question the counsel for the defendant objected; which objection was overruled by the court; to which ruling of the court the counsel for the defendant then and there excepted.)

Ques. The question is, whether in the course of your connection with Mr. Bourcicault, at and about the time of his coming to
45 this country and purchasing the real estate in question, you have any recollection of any conversation with him with reference to his intentions in coming to this country, and whether you derived from your conversation with him any impression upon that subject?

Ans. I don't remember ever having had any conversation with Mrs. Bourcicault upon the subject at all. I have no distinct recollection of any definite conversation with Mr. Bourcicault upon the subject; all I can say is, that as far as my memory serves me—and it must have been got from conversation—I am impressed with the idea that he did intend to make the United States of America his permanent residence; but I can't give the words of the conversation, nor when nor where it took place; and it is almost too faint to be very satisfactory.

Ques. What time was it, sir, that you got that impression from your connection, from your conversations with Mr. Bourcicault, about what time? State as near as you can.

46 Ans. I don't think, sir, if I once did get such an impression from Mr. Bourcicault, I must have got it from conversation with him. I never had any written communication with him on the subject; and I don't think that is being represented, or to your knowledge has ever been represented, in the United States of the title of the Octoroon, or Life in Louisiana, except Bourcicault's play.

Ans. I do not.

Ques. Have you ever heard any play, except Bourcicault's play, by the title of the Colleen Bawn, or the "Brides of Garry Owen," that has been represented in the country?

Ans. Never, sir.

Ques. Are you acquainted with the play of Pauvrette?

Ans. Not at all, sir; I never saw it until you showed me the printed copy of it this morning. I never heard of it, I believe.

Cross-examination.

By Mr. Bates:

Ques. Mr. Bourcicault is an Englishman?

Ans. He is an Irishman.

47 Ques. When, during this period of time that you were acting with Mr. Clarkson, as his attorney, was he not then engaged in acting in the various cities of the United States?

Ans. I don't think he acted himself. Mr. Bates, I think he managed for Miss Robertson. I don't think I ever saw Mr. Bourcicault on the stage himself, but I know that he made engagements for and traveled with Miss Robertson, who was then Mrs. Bourcicault, and I think while he was in New Orleans that he did manage a theatre himself.

Ques. Did Miss Robertson come to this country with Mr. Bourcicault?

Ans. I don't know.

Ques. His business was in making engagements in the various cities of the Union where Miss Robertson performed, and he acted as her agent, acted in a general manner for her?

Ans. I so understood it.

Ques. At what time was it that he purchased property in this city; when he was here in '56?

Ans. No, sir; before that. He purchased that property, I think,

48 in the early part of 1854, or it may have been in the fall of '53.

Ques. Was he here, or purchased it through you?

Ans. I think he was here personally.

Ques. What kind of property was it?

Ans. Lots, down here, and it is now the most populous part of the southern part of the city, down 23 or 24th street, down near the lake.

Ques. He had no business property, nor dwelling-house property, I mean upon which was a dwelling house?

Ans. Not that I know of. I know of no other property, except that he had 16 or 18 lots there, that he purchased from Mr. Rossiter.

Ques. During the whole of this time you were corresponding with him, he was travelling around, and the letters were sent to the various cities?

Ans. Yes, sir. One time he would be addressed at Saint Louis, another at New Orleans, another time Philadelphia, another time at Boston, sometimes at Niagara Falls, wherever he happened to be.

49 Ques. So that during that period of time he really had no permanent abiding place, that you know of?

Ans. I supposed to various points where Miss Robertson's dramatic engagements required her attention.

Ques. And the last you knew anything of him professionally was in '57?

Ans. In '57. Yes, on the 23rd of June, 1857, by his request, I remitted to him, to New York, some $291 of his money which was in my hands. I had paid once to Dr. Duff, here, by his order, some considerable sum, and had remitted to his agents in New York, Cornell & Fowler, quite a large sum, and there was a balance of $291, and he requested me to send on my account current, which I did, and his account was then closed with me, and I have had no other relations with him since.

Ques. As to his intentions to become a permanent resident of this country, I understood you to say all that you know upon that subject is an impression which you say was on your mind, and which you derived from him, that he did intend to remain permanently in this country?

50 Ans. As I said, Mr. Bates, I can't say definitely. It is a mere impression, almost too faint to be of any value to anybody.

Ques. I understood you to say that you have never seen the Octoroon performed but once?

Ans. I never saw it performed but once, and that was at McVickar's theatre, I think.

Ques. How is it about the Colleen Bawn, have you ever seen that?

Ans. Yes, sir; I think I have seen them perform that more than once.

Ques. Have you ever seen either of those plays, or plays of the same name with these, performed elsewhere than in this city, that is Pauvrette?

Ans. I know nothing of the Pauvrette. I never heard of it until Mr. Clarkson showed me the printed copy of it this morning.

Ques. Have you ever seen a printed or any copy of the Octoroon, or read the play?

Ans. No, sir.

Ques. Have you ever read the Colleen Bawn?

Ans. Never.

Ques. Then you don't know anything about the performance of either of those plays, except as you have seen them in our own theatre?

51 Ans. I have never seen either of them anywhere else, that I know of.

J. H. McVickar, a witness called on behalf of the plaintiff, having been duly sworn, was examined in chief by Mr. Clarkson, and testified as follows:

Ques. James H. McVickar is your name?

Ans. Yes.

Ques. What is your profession, and how long have you been engaged in it?

Ans. As actor and manager about 26 years.

Ques. What is your profession now, your occupation at present; where do you reside; how long have you resided there?

Ans. I am an actor and a manager. I reside in Chicago.

Ques. For how long?

Ans. I have resided in Chicago for 19 years; pretty near 20.

Ques. Are you the proprietor of any place of amusement in this city?

Ans. I am, sir.

Ques. What is the name of it?

Ans. I am the proprietor of McVickar's theatre.

Ques. Do you know the plaintiff in this suit, Dion Bourcicault? If you do, state when you first made his acquaintance, and

52 where, and how long you have known him.

Ans. I have known Dion Bourcicault since 1853. I met him first in this city. I would not be sure whether it was the early or latter part of 1853. I think in the spring of 1853.

Ques. What was he doing at that time, and was any one with him in his business? If so, whom?

Ans. He was here at that time for the purpose of superintending the engagement of his wife, who was known to the public as Agnes Robertson. She was playing an engagement at Rice's theatre.

Ques. The old theatre on Dearborn street?

Ans. The old theatre on Dearborn street.

Ques. After that time, Mr. McVickar, did you know where was Mr. Bourcicault at that time? Where did he reside at that time, when you first knew him?

Ans. I don't know that he resided in any particular place, because he was travelling around the country, for the purpose of fulfilling engagements. Whether he had any permanent residence in

53 the country at that time, I don't know.

Ques. Do you know of Mr. Bourcicault's ever having purchased any property in this city, after you made his acquaintance; and if so, in what year was it, and where did he purchase the property, and from whom?

Ans. I know of talking with him in reference to buying property, and have reason to believe that he did buy.

Ques. When, and where, and from whom?

Ans. I think in 1854 he bought the property of a Mr. Rossiter.

Ques. Do you recollect about the location of that property?

Ans. Not the exact location, but it is somewhere in the southern portion of the city. It used to be in the vicinity of Cottage Grove.

Ques. At and about that time, about the time he was purchasing, or about to purchase that property, had you any conversation with Mr. Bourcicault with reference to his coming to this country, and his intention in coming to this country? If you had, state what it was.

Ans. There was no conversation that I ever had directly
54 on that subject. I remember a conversation with Mr. Rossiter, Mr. Bourcicault and 2 or 3 other gentlemen at the American House, who the gentlemen were, I don't know, in which Mr. Bourcicault expressed himself in very high terms regarding the country, as being a good country to live in, a good country to invest in, leaving the impression on my mind that he intended really to make the west his home, not only the country, but Chicago, at that time, although he didn't say it in that many words; but that was the impression he gave me.

Ques. Did Mr. Bourcicault at that conversation say anything about his intention as to making this country his home?

Ans. Not in so many words. I don't think he did; in fact it is so long ago that it would be impossible for me to remember the words. I can only remember the general conversation. I can remember walking from the American House with Mr. Bourcicault after leaving Mr. Rossiter, and his advising me, being a younger man than him, to save my money and invest it in property. I remember such general things as that, but not the exact words.

55 Ques. Whether you remember the exact words or not, I ask you do you recollect from that conversation with Mr. Bourcicault, at or about that time, that you derived from him the impression that he intended to make this country as his permanent home?

Ans. I decidedly did, and always looked upon him as a resident of this country; that was the impression I gained from his conversation.

The Court. Was his wife a native of this country, Miss Agnes Robertson?

Ans. No, sir; I think she was a Scotch lady, or Irish.

The Court. You mentioned, Mr. Hervey, that she was a native of Scotland.

Mr. Hervey. Yes, sir; I believe I said she was a native of Edinburgh; I said she was a Scotch woman.

Mr. McVickar:

Ques. Do you know, Mr. McVickar, where Mr. Bourcicault resided in 1856 and '57 and after that time, whilst he was in this country?

Ans. In '56 and '57 I think he resided in New York; I could not state positively when he took up his residence there, but I
56 think in '56; I met him in New York; it was one of those mere casual meetings; I paid no attention to it; I think it was in '56.

Ques. Do you know of his having a residence in the city of New York in the year '57, and where it was?

Ans. I know that he had the reputation of having a residence. I never was in his residence; it was generally understood by myself, and always understood——

(Objected to.)

Then I have no knowledge, if to be in his house was a knowledge. I never was in his house.

Ques. Was he keeping house in the year '57 in New York?

Ans. I have had letters from him dated from his residence in New York, I think 19th street, but I would not be sure that that is the street. I know it was some low number, 23d or 33d, or something that way; 19th street, I think 19th; I know that I have had letters from him directed from his residence.

Ques. From the conversations you have had with Mr. Bourcicault in '54, what did you understand as to Mr. Bourcicault's inten-
57 tions of going back to Europe?

Ans. Not any.

Ques. You understood that he had no intention of going back to Europe?

Ans. I didn't understand anything about his going back to Europe in any conversation I ever had with him.

Ques. Then what did you understand?

Ans. I always understood from him that this country was a better country than Europe.

Ques. Anything further?

Ans. Better for his business, and that he intended to remain in it.

Ques. And that he intended to remain in it?

Ans. And that he intended to remain in it; that is what I have always understood.

Ques. Do you know when Mr. Bourcicault went back to England?

Ans. I am very bad on dates.

Ques. About the time?

Ans. I think about '60, just before somebody fired on Sumter.

Ques. That was in the spring of '61?

Ans. In the spring of '61 that was, I think; he went in the fall previous to that; I think 1860.

Ques. In the fall previous to that time?

58 Ans. Yes, sir.

Ques. You think it was in the fall or winter of '60?

Ans. I think it was in the fall of '60, or early in '61; it may have been January, '61 or about that time.

Ques. Where did he reside during that time up to the time he left this country; what was his generally known place of residence?

Ans. New York city.

Ques. Are you acquainted with any of Mr. Bourcicault's plays?

Ans. I am.

Ques. Are you acquainted with Pauvrette or Colleen Bawn and the Octoroon?

Ans. I am acquainted with the Colleen Bawn and the Octoroon. I have no acquaintance with Pauvrette beyond a knowledge that there is such a play. I have read it but have never seen it represented.

Ques. Is Pauvrette published in print?

Ans. Yes, sir.

Ques. Are Colleen Bawn and the Octoroon published in print?

Ans. No, sir; not to my knowledge.

Ques. Have authorized copies of it been published?

59 Ans. I remember some years ago seeing a copy.

Ques. Copy of which?

Ans. Of the Octoroon, in more of a novel form than plays generally are.

Ques. Published by Mr. Bourcicault?

Ans. No, sir; at least I presume not. I tried to purchase it, but could not; it was a clandestine copy in the hands of an individual.

Ques. Do you know of the Octoroon or Colleen Bawn ever having been published, printed, and sold?

Ans. No, sir; I do not.

Ques. How long have you been acquainted with Bourcicault's plays, the Octoroon and Collean Bawn; have you ever played in either of them?

Ans. I have played in both of them. I have acted in both of them.

Ques. How long have you been acquainted with them?

Ans. I think the Octoroon was first produced in '59; but I don't want you to take anything from my dates, because I am very bad on them, but I think in '59 the Octoroon was first produced; I think I produced it in Chicago in '59.

Ques. You produced it you think at that time?

Ans. Yes, sir.

60 Ques. What is the character of the play of the Octoroon; what is it about, sir?

Ans. Well, it is on the subject of slavery, or "Life in Louisiana," as the author called it.

Ques. It is on the subject of slavery?

Ans. Yes, sir.

Ques. Do you recollect any of the features of it that are striking?

Ans. Oh, yes, sir; I can act the whole play nearly for you, if that is what you want.

Ques. I have no doubt of that, Mr. McVickar. I am asking you now to state to the jury for their satisfaction, and the court, what striking points, if any, there are produced in that piece, so that we can identify the piece in some way.

Ans. Well, I would state that the first act, then, ends with McCloskey stealing the private papers from the family of the Peytons. The second act ends with McCloskey calling the negro boy Bill, in order to rob the mail boy. The third act ends with McCloskey's purchas-

ing Zoe, the Octoroon slave. The fourth act ends with the
61 burning of the steamboat, and the escape of McCloskey from the steamboat and being pursued by the Indian Wahnotah. The fifth act ends with Zoe going to that place where there is no law, but only justice.

Ques. We profess to have justice here sir, as well as law.

Ans. I am giving you the strong points of the play.

Ques. Will you tell us, Mr. McVickar, what part you represented in that play?

Ans. I played "Salem Scudder." I was a Yankee, or American.

Ques. State to the jury some of the principal characters of the play. Just take them in their or out of their order, as you can.

Ans. Zoe, the principal female character.

Ques. She is the Octoroon?

Ans. Yes, sir. Dora, another female character; Mrs. Peyton, Aunt Cloe, I think, and then there is Salem Scudder, George Peyton, Mr. Sunnyside, McCloskey, Wahnotah, and Bill, the negro boy.

Ques. But one prominent one you have omitted yet.

Ans. A prominent one?

62 Ques. Old Pete—Uncle Pete.

Ans. It is strange I have forgotten him, seeing him before me, too.

Ques. Those are the prominent characters?

Ans. Yes, sir; there are some half a dozen smaller characters.

Ques. How many acts are there?

Ans. Five.

Ques. It was produced in '59?

Ans. I think '59.

Ques. Who produced it? Had you the stars at that time?

Ans. Yes, sir; Miss Kimberly.

Ques. State to the jury what persons have produced that piece in your theatre or since that time.

Ans. Miss Kimberly, I think, played two engagements with me.

Ques. I don't care about being precise, but generally.

Ans. The Octoroon? Well, three different stars, Miss Kimberly, Mr. Chanfrau, and Mr. Buchanan, McKean Buchanan.

Ques. What parts did they represent—Chanfrau and McKean Buchanan.

Ans. Chanfrau played Pete, and Buchanan played the Indian Wahnotah.

Ques. How were these pieces produced in your theatre; by
63 what means were you enabled to produce them; that is, "The Octoroon?"

Ans. Mr. Roberts, the husband of Miss Kimberly, produced or purchased the right of the Octoroon from Mr. Bourcicault for Chicago, for one year, originally.

Ques. And produced it under that right?

Ans. And produced it with me under that right.

Ques. What had he to enable him to produce it, if anything?

Ans. He had nothing but the talent of his wife that I know of; you mean what he produced.

Ques. What did he play it from?

Ans. I played it from manuscript, furnished by Mr. Bourcicault; manuscript copy.

Ques. How was it produced by Chanfrau and McKean Buchanan?

Ans. By similar manuscripts.

Ques. Purchased from who?

Ans. From Mr. Palmer.

Ques. Who was he?

Ans. He was at that time the agent of Mr. Bourcicault. I don't know what his initials are; Harry, I think—Harry Palmer.

Ques. From time to time since '59 that play has been produced in your theatre?

64 Ans. Yes, sir.

Ques. I will ask you, sir, whether these plays were—whether this play was produced in your theatre, always, since the time it was produced, by Mr. Bourcicault or his agents?

Ans. Yes, sir; on all occasions.

Ques. Do you know whether or not Mr. Bourcicault or his agents received any remuneration from the star, from the performer?

Ans. I know that they were to do so, whether the money was paid or not I have no knowledge, but I know the stars that played with me were liable to him for a certain amount each night, and I presume they paid it.

Ques. How long have you known the play of the Colleen Bawn?

Ans. Colleen Bawn, I think, was, let me see, 18 months previous to the Octoroon, wasn't it? I think '58; I will say '58 at a venture. I first produced the Colleen Bawn with Mr. Collins, here in my theatre; the Irish comedian, I think it was.

Ques. Mr. McVickar, I want you to examine with reference to that.

65 Ans. I have the dates; my file of bills would make my dates correct, but my head cannot.

Ans. Well, I want you to examine about that, and state distinctly about the date.

Ques. The first time I produced it?

Ans. Well, yes; I want to know because it is important to establish the date, and that precisely, at least as near as you can, when it was first produced in your theatre. Your impression is the Colleen Baun was produced earlier; I am satisfied your impressions are wrong.

The Court. He is not certain about his dates.

Ans. I know I have produced both the plays, but I could not say which was first.

Ques. I ask you this question: was this play produced in your theatre? was that play copyrighted by Mr. Bourcicault?

(Objected to.)

Ques. I want to know whether this play of the Colleen Bawn was produced by you in your theatre before you understood that

66 Mr. Bourcicault had taken steps to copyright it.

(Objected to.)

Ans. Oh, no.

Ques. Are you positive that this play was produced in your theatre before March, '60—the Colleen Bawn?

Ans. No, sir; I would not be positive of anything where there are dates.

Ques. You can't say that was produced before the 23d of March, '60?

Ans. No, sir; I could not.

Ques. I ask you now about the Octoroon. Can you state that was produced before the 12th of December, 1859?

Ans. I can't state anything positive about a date that goes thirty days back.

By the Court:

By bringing in some old files of newspapers I presume you could establish the date?

Ans. I can get the dates; I can find them. I can't carry a date two hours if I try. I can get this date and bring it into court this afternoon.

Ques. Who played the Colleen Bawn in your theatre?

67 Ans. First, Mr. Collins, the Irish comedian, has produced it with me.

Ques. Any others?

Ans. Since that Mr. Florence, Mr. Chanfrau, I think, Florence, Chanfrau, and Collins have been the three Miles Na Coppleen.

Ques. Did you play in that piece?

Ans. I did on one occasion.

Ques. Are you well acquainted with the play?

Ans. Very well; not as well as the others, because I never acted in it so much.

Ques. Give me some of the characters in that; did Agnes Robertson ever play in that piece?

Ans. She was the original of that in New York.

Ques. What did she play; what characters?

Ans. She played "the Colleen Bawn," "Eily O'Connor," I think; I would not be certain. She played the principal female characters.

Ques. And the Irish character, Miles Na Coppleen, was what Mr. Bourcicault played in this?

Ans. Yes, sir; I think Mr. Bourcicault was the original Miles Na Coppleen.

68 Ques. Do you recollect whether Agnes Robertson played in the Octoroon ever?

Ans. She was the original Zoe.

Ques. State to the jury what was the characters, the prominent characters in the Colleen Bawn, the names of some of them.

Ans. There is: Miles Na Coppleen is considered the principal Irish part; Danney Mann, Carrol Dale, Father Tom. I really forget; Hardy Creagan; those characters you find all in the Colleen Bawn.

Ques. How many acts are there in that piece?

Ans. Three acts.

Ques. It was played in your theatre at different times by Collins, Chanfrau, and Miss Robertson?

Ans. No; she has never acted with me.

Ques. How was that play produced in your theatre; by what means were you enabled to produce it?

Ans. It was produced by manuscript furnished to Mr. Collins; first Mr. Collins purchased the right of the Colleen Bawn, I think, for a great many cities.

69 Ques. From whom?

Ans. Mr. Bourcicault. When the piece was first produced Mr. Collins purchased the right.

Ques. How with Mr. Florence?

Ans. Since that Mr. Bourcicault, or his agents, have been selling copies of it by the net; that is allowing Mr. Florence or Chanfrau to act it by paying him so much a night.

Ques. And limited the privilege of playing these actors had by paying so much a night by authority of Mr. Bourcicault?

Ans. Yes, sir.

Ques. That was the way with Florence; was that the way with Chanfrau?

Ans. Yes, sir.

Ques. Those plays have been played, I suppose, a great many times in your theatre in the past year?

Ans. Yes, sir, a great many times.

Ques. By what authority has it been played during those times?

Ans. By my having a certain knowledge that those stars really had the right of the piece from the author or his agents.

Ques. Do you know whether or not the author or his agents received any remuneration, or was to receive any?

70 Ans. I know that they were to have done it.

Ques. Do you know it from the statements that those persons made to you?

Ans. I know that I never allowed a star to produce a piece unless I am satisfied that he has a right, and so in satisfying myself of that right, I find out what he has to pay for it.

Ques. You do first ascertain whether they have the right?

Ans. I do. I don't wish to involve myself in their claims. Those men have all satisfied me that they had the right.

Ques. You say this piece was produced always from manuscript copy obtained from Mr. Bourcicault, or his agents in New York?

Ans. Yes, sir, always.

Ques. And not from printed copies of the play?

Ans. No, sir.

Ques. Examine these two manuscripts, Mr. McVickar, and state whether you have looked at them before; if so, when, whether you know what they are, and state what they are, (handing witness the manuscripts referred to.)

Ans. I have seen them before; yes, sir, this is a correct copy of the Colleen Bawn.

71 Ques. Of whose "Colleen Bawn"?

Ans. Mr. Bourcicault's. There never was any other that I know of.

Ques. I will ask you that question pretty soon. Do you find anything in these, find anything in that play, that indicates to you that it is the original?

Ans. It has ever been acted from this play.

Ques. How do you know it?

Ans. By marks, which are only made on acted plays, as a usual thing, unless some one has marked it for a purpose; what we call an acting manuscript.

Ques. Well, now look at the other, sir.

Ans. This is a copy of "The Octoroon."

Ques. Of whose Octoroon?

Ans. Bourcicault's Octoroon.

Ques. Now, will you state to the jury, Mr. McVickar, whether there is any other play played in the United States at any time now or heretofore, to your knowledge, by the title of "The Octoroon," or "Life in Louisiana," or by the title of the Colleen Bawn, except Mr. Bourcicault's two plays?

By Mr. Bates:

Of your own personal knowledge, Mr. McVickar.

72 Ans. Have I ever known them to be acted?

By Mr. Clarkson:

Ques. Have you ever known any plays by the title of "The Octoroon," or "Life in Louisiana," or "The Colleen Bawn," any plays, except Bourcicault's plays played by that title in this country?

Ans. I never have.

Ques. Then there is no other play by the title of "The Octoroon," except Mr. Bourcicault's that you know of?

Ans. Not to my knowledge.

Ques. Nor of the Colleen Bawn, except his that you know of?

Ans. No, sir.

Ques. Do you think you would be likely to know if there was?

Ans. I would be very likely to know; yes, sir, unless it was in some out-of-the-way, place, Dacotah, or some place of that kind.

Ques. Will you look at that book, that is attached to the deposition; that book that you find attached to that deposition, as entitled "Pauvrette." State to the court and jury whether that is Bourcicault's play of Pauvrette or not.

Ans. I remember hearing of this play some years ago, cas-

73 ually, as Mr. Bourcicault's. I have never produced it; never seen it acted.

Ques. Do you know of that piece having been performed in this city by any other title than "Pauvrette"?

By Mr. Bates:

Mr. McVickar, we want your personal knowledge. The question is whether you know of it having been performed at Wood's theatre;

if you have ever been there, and seen it played, I want to know whether you have any personal knowledge.

By the Court:

I suppose the knowledge may be other knowledge besides his actually having attended the theatre.

By Mr. Bates:

How could he know that particular play was performed at Colonel Wood's theatre, then?

The Court. He could not hear it if he had not been present, but at the same time he could tell what he knew in relation to it. For instance, if he saw bills posted for its appearance at Wood's theatre.

Ques. State whether you have known of that piece being produced in this city; if so, where; lasting some time, and by
74 what title; state what you know.

Ans. I have known it to be produced under the name of "The Avalanche."

Ques. Anything else?

Ans. "Under the Snow."

Ques. How do you know it to be this piece; what is it satisfied you that it was this piece that was produced there?

Answer. Because I have heard of it being produced under the same title at other places. If I am not mistaken, it has been frequently played under the name of "The Avalanche," or "Under the Snow," that being considered a better title than "Pauvrette," a more taking title, and it is generally understood the play is better known in the profession as "The Avalanche," or "Under the Snow," than it is as "Pauvrette," but whether the words of the play were spoken or the words were produced, I have no knowledge.

Ques. You do know that the play, Bourcicault's "Pauvrette," has been played as a more taking title by the name of "The Avalanche," or "Under the Snow"?

Ans. Yes, sir.

75 Ques. State to the jury if there is anything else from which you are enabled to state that this piece was produced at Woods Museum; what did you see that enabled you to say that it was this piece, except the title of "The Avalanche," or "Under the snow?"

Ans. I saw nothing except their bills.

Ques. What did the bills contain?

Ans. The names, I think.

By a juror:

The character of the play?

Ans. The incidents, but I have paid no particular attention.

Ques. State to the jury whether you know of the play of the Octoroon having been produced at Wood's Museum in the year '64, '65, or '66, or any of these?

(Objected to as stating anything about '64, because that is outside of the statute.)

Ques. Will you state to the jury whether you know of the play of the Octoroon having been presented in this theatre, at Wood's Museum, at any time since January, '65?

Ans. I think it was produced at Wood's Museum in April or May, '66.

Ques. Will you state to the jury if there is anything, any
76 fact that enables you to state with positiveness that it was produced about that time?

Ans. Well, without seeing it acted I am very positive it was, because I produced it about the same time myself. Buchanan was acting with me at that time. Colonel Wood, I think, produced the piece a night or two before Mr. Buchanan did.

Ques. I will ask you whether theatres are sometimes in the habit of doing that in underlining?

(Objected to.)

Ques. Well, sir, you do state who produced the piece first?

Ans. I think the Museum.

Ques. Had he underlined it at that time?

Ans. I know we both did it.

Ques. Had you underlined that you had advertised you were going to produce it at your theatre, and then it turned up here?

Ans. I engaged Buchanan expressly for the Octoroon, because he was a big man and I thought he would look Indian well.

77 Q. And then the piece appeared advertised at the other theatre?

A. Yes, sir.

Q. How do you know it was that piece?

A. I know enough to satisfy myself.

By Mr. Bates:

State your personal knowledge and nothing else.

Q. You know all the character of the advertisements?

A. I don't think it was advertised if I remember right, as Bourcicault's. I think it was advertised "The great American drama, the Octoroon."

Q. Were the cast of characters advertised—some of them?

A. They were advertised in the programme.

Q. Did I understand you to say that at that time Buchanan was paying for the right to represent it here?

A. He had the right; yes, sir.

Q. I will ask you, sir, whether to your knowledge "The Colleen Bawn" has been produced at Wood's Museum during the years '65 and '66, at any time; what is your best recollection upon that subject?

A. Well, I have no particular recollection of that.

Q. You have no particular recollection of that?

A. No, sir; I have heard that it was, but I think I was out
78 of the city, and therefore I don't even remember seeing the advertisement.

Q. Have you stated that you have never produced the play at your theatre in any way except by manuscript?

A. Never, in any way; I never saw a printed copy of it except one that I spoke of, that I tried to purchase but could not.

Q. That you say was a clandestine copy?

A. Yes, sir; and it was published by who I don't know. I saw it. It was a very neat copy of the Octoroon, at least I thought it was. I didn't read it all through. It was in good form.

79 *Cross-examination.*

By Mr. Bates:

Int. When you first saw Mr. Bourcicault here at the American, that was the "Young American," wasn't it?

Ans. The American Hotel; it was the old house.

Int. It was on the corner of Randolph street?

Ans. No, sir; the corner of Wabash avenue, I think, and Lake street, the old American House.

Int. At that time you say that Mr. Bourcicault was travelling with Miss Robertson, his wife, superintending her engagements—I suppose acting as her agent?

Ans. As her agent, and occasionally acting himself.

Int. Then that continued so far as you know until you received these letters from him which purported to come from him—from his residence in New York?

Ans. Yes, sir.

Int. Tell this jury whether you know the time Bourcicault ever had, to your own personal knowledge, a home in the city of New York except from the letters you received from him.

80 Ans. I don't know what constitutes my own personal knowledge in such a matter.

Int. You have never been at his house have you?

Ans. No, sir.

Int. Do you know of his ever having kept in the city of New York?

Ans. Not by being in his house, but I know by receiving letters and addressing letters to him at that time, and believing it to be his place of residence; if that is knowledge, I have it.

Int. You have never been at his house?

Ans. I never have.

Int. Of course, his statements would not be evidence to that fact, then when he bought this real estate here things were pretty high in Chicago in 1856 and 1855, before the crash came on, there was a great deal of excitement about real estate?

Ans. Not quite as much as there was shortly after 1855 and 1856.

Int. I understand you to say, that the impression you got from him at that time was speaking of the glories of this great northwest,

81 that he concluded to make his home here in the northwest if he had a home in this country?

Ans. Yes, sir; he admired the west very much.

Int. Wasn't the impression left upon your mind that Mr. Bourcicault was going to settle here in Chicago, or at the northwest somewhere?

Ans. Yes, sir; that was the impression. He was certainly going to become a resident, and was likely to build a residence upon this property that he was buying.

Int. Haven't a good many others of the fortunate actors of the country invested their money here?

Ans. They have generally been fortunate if they have.

Int. We have an illustration of that right here in the witnesses' box now; as to these plays, you say that you never were at his house at all in New York, and you know nothing of his residence except as you derived it from this correspondence. Now as to those plays, about this Octoroon first, don't you know, sir, that there is a novel published by Mr. Hosmer, formerly connected with the Toledo
82 Blade, which embraces substantially this same plot and place called the Octoroon?

(Objected to.)

By Mr. Bates:

My object is to show that from that novel, the same plot, and the same characters, and the same play may have been taking the novel as a basis; it may have been formed into a play, and that this play that was performed here in this city was taken from that novel, and not from the manuscript.

By the Court:

If you want to show that the play itself was not a work of Mr. Bourcicault.

By Mr. Bates:

That is the object.

By the Court:

By showing that there was a novel, substantially the same, by another person, I think you may show it.

By Mr. Clarkson:

That is what we object to, your honor.

By Mr. Bates:

I do not seek to deprive Mr. Bourcicault of the paternity of this play. I seek to show that there is a novel, the title of which is
83 the "Octoroon," the characters and plot of which are substantially the same, from which I may hereafter, if I can, show that this play, if there was such a play performed at Wood's theatre, that it was nothing but the dramatizing of that book; and as all the exciting novels are dramatized every day, and even the novel of Henry Ward Beecher, which is not yet finished as a novel, is already upon the stage, I want to show that this play, which was performed, if there was any play performed, at "Wood's theatre, was taken from that work—the plot and the characters represented in it.

By the Court:

I have no doubt that a dramatic author may construct many and perhaps all the incidents of this play from a novel, but still he is to be protected in his dramatic works just the same as though it was entirely original; but if the drama is so complete a copy of the novel as to deprive the drama of its originality and protection under the law, then I think you can show it. Sometimes the line may be a very narrow one, but ordinarily I admit the correctness of the rule that the author is protected even though he takes his drama
84 from the novel. Shakespeare took many of his most celebrated plays from known stories. It would be difficult for us to understand the matter without understanding at the same time what is the knowledge of the witness as to the Octoroon. Let him state what it is, before we can determine.

Int. Do you know anything about such a book?

Ans. I have no personal knowledge of it.

Int. You never saw it, and never read it?

Ans. I never saw it.

Int. Now, Mr. McVicker, as to the publication of the Octoroon; did I understand you to say that you never have seen a printed copy, or had seen it?

Ans. I had seen it.

Int. Where and when did you see that copy?

Ans. I saw it in this city in the hands of some young man; I forget who it was. I didn't know him really, but he had a few books for sale, and amongst them was a copy of the Octoroon.

Int. When was it that you saw that copy of the Octoroon?

85 Ans. About 1860, I think, '61 or '62.

Int. I want to know if you know when Mr. Bourcicault left this country.

By the Court:

He has stated it.

Ans. I stated about the fall of 1860, or early in 1861.

Int. Has he ever been in this country since?

Ans. Not to my knowledge.

Int. Have you any means of knowing, personally, anything as to what have been his pursuits in England—in London?

(Objected to.)

Int. Have you any means of knowing, or personal knowledge of where he has been since 1860, and what he has been doing?

Ans. I have no knowledge, except from hearsay from the papers—puslished reports about him.

Int. You haven't had any correspondence with him?

Ans. Never, since he left the country.

Int. He left the country about the time of the firing on Fort Sumpter?

Ans. A little before that, I think.

Int. I was going to ask you, whether the firing—of your own per-

sonal knowledge—the firing of that gun on Fort Sumpter had anything to do with his going away.

86 Ans. I think Mr. Bourcicault and two or three other prominent members of the profession left the country at that time under the impression that theatrical was going to be very bad during the war, and that it would be better to go to Europe.

Int. And there he has been ever since, so far as you know?

Ans. Yes, sir.

Int. Where was it you saw this copy of the "Octoroon?"

Ans. I couldn't state, Mr. Bates. It was about 1861, '62, '63, or '64. It was merely a casual thing of a person in the street with an old lot of books, and some one said, Here is a copy of the "Octoroon."

Int. Do you purchase here in the city, at all, your plays for your theatre?

Ans. I purchase plays of McNally and of Walsh.

Int. Do you, or not, know personally that copies of the Octoroon can be obtained by application either at McNally's or at the other places?

(Objected to.)

Ans. I do not.

Int. Did you ever see a copy of the Colleen Bawn in print?

87 Ans. I never did.

Int. Have you seen copies of the "Pauvrette," or "Under the Snow?"

Ans. Yes, sir.

Int. That is printed, isn't it?

Ans. Yes, sir.

Int. And that can be bought at any of the book stores?

Ans. I presume it can. It is published in what we call the French edition of plays in this country.

Int. Sold at the same price as this lot of plays, like this one attached to this deposition, isn't it?

Ans. That is "Pauvrette," I think.

Int. They are sold all over the country for a dime a copy?

Ans. Fifteen cents, I think; they vary in price according to location.

Int. Now, Mr. McVicker, I want to ask you if, of your own personal knowledge, you can state to this jury that at Col. Wood's Museum, at any time, that manuscript which lies upon that table was ever produced or performed, the Octoroon?

Ans. No, sir; I couldn't, of my own personal knowledge.

88 Int. So I suppose.

Ans. Yes, sir; unless I had been in the theatre and seen it.

Int. All that you do know upon the subject, if I understand you, is the advertisement in the newspapers and bills, on the programme, where that name is the same and the names of the characters are the same?

Ans. Yes, sir.

Int. You never have been in the theatre when either one of those plays was performed, have you?

Ans. No, sir; I have not.

Q. You, personally, therefore don't know anything about it?

Ans. No, sir.

Q. Do you know personally anything, or have you any means of knowing personally, that either one of those plays, or both of them, have ever been secured by copyright? I don't ask you for information you have derived from Buchanan or Chanfrau—can you state positively, do you know whether, from what you have heard from
89 Buchanan or Chanfrau, that either of those plays, or both of them, have ever been secured by a copyright?

Ans. I have never searched the district courts to find out.

Q. And you have never seen upon the manuscript itself the evidence that it was so secured, have you?

Ans. I have seen on the copy that Miss Kimberly had a title page, the same as they are compelled to file for record in the district court, stating that it was filed in the district court at such a date.

Q. When was that?

Ans. It was when I first produced it, in 1859. Whether it was on the others or not, I never examined them. I was managing the stage myself, and after the production the plays didn't go through my hands. The title may have been on the manuscript, and I not have seen it.

Q. Since the first of Jan., 1865, within the last two years, because we are confined to that in this case, all that you have known about the plays is that those gentlemen whom you engaged as stars represented these plays, and stated to you that they had the
90 lawful authority to do so; that is all you know about it, isn't it?

Ans. I only know by general knowledge, such as reading the law suit in reference to the play; it was there admitted, I think, that it was copyrighted; Roberts *vs.* Myers; it was about the Octoroon.

Q. I am speaking now from 1865, within the last two years.

Ans. My knowledge about its being copyrighted?

Q. No, sir; if within the last two years you have or not paid any attention to the manner in which these plays were put upon your stage, except from the information you derived from McKean Buchanan, when he was going to play, or Chanfrau, or any of those gentlemen, whether they furnished you with any particular evidence upon the subject?

Ans. Nothing more than confidence in the documents they showed me was concerned; they may have been forgeries for all I know, but my confidence in the men made me believe that they were
91 correct.

Q. I want you to state now as to this "Pauvrette;" you say that you saw it noticed that the play would be performed at Wood's theatre, entitled "Under the Snow." Was there such a play; have you ever known such a play, seen it, or read it?

Ans. No, sir, I have not.

Q. You don't know that there is any such a play; how do you know then?

Ans. You mean this "Pauvrette?"

Q. I am talking about "Under the Snow."

Ans. I know of none but the "Pauvrette," which I have known to be called that.

Q. You have known it to be called the "Avalanche?"

Ans. If I was going to produce it myself, I would call it the "Avalanche" or "Under the Snow," instead of "Pauvrette."

Q. Was there any such play as "Under the Snow" except this "Pauvrette?"

Ans. Not that I know.

Q. You say you have never seen that?

Ans. I have never seen it played; I have seen the "Pauvrette" but I have never seen a different play from that called "Under the Snow."

92 Q. And you don't know that that play which was published as "Under the Snow," that was performed at Wood's theatre at any time within the last two years, is the play that Mr. Bourcicault claims to be the author of, do you?

Ans. I don't know it positively; I think it was announced as Bourcicault's play, "The Avalanche," or "Under the Snow," if I am not mistaken; you can get very good evidence in the bills or in the newspapers, better than I can give it.

Q. You haven't been in England yourself since 1860?

Ans. Not since 1855.

Q. And have never received any communication from Mr. Bourcicault since he arrived in England?

Ans. No, sir.

Re-direct examination.

By Mr. Clarkson:

Q. Do you know where I reside?

By Mr. Bates:

State of your own personal knowledge.

Ans. You reside on the north side of the river, and that is about all I know of it.

93 Q. What city do I reside in; I am really serious, sir.

Ans. I can go to your house, but I couldn't tell you the street.

Q. What city?

Ans. Chicago.

Q. How do you know it?

Ans. As well as I know any other earthly thing.

Q. How do you know it?

Ans. Well, I should say I knew it by common consent, and nobody would dispute it.

Q. How long have I resided in the city to your knowledge?

Ans. I have known you, I think, 16 or 17 years.

Q. Have I resided here all that time, so far as you know?

Ans. Yes, sir.

Q. Is that the character of your knowledge about Mr. Bourcicault's residence in New York? It is not so strong as that, but do you know that Mr. Bourcicault resided in New York in about the same way that you know I reside in Chicago?

Ans. It is about the same way.

94 Q. There are a few questions I should have asked Mr. McVicker, in chief. Do you know the defendant in this suit, Joseph H. Wood?

Ans. I do.

Q. How long have you known him?

Ans. I have known him a long time, I do not really remember the first time I met Col. Wood, or how many years ago it was.

Q. What is his business at this time, and what has it been up to recently?

Ans. Manager of the Museum.

Q. What is the name of the building?

Ans. "Col. Wood's Museum," it is called.

Ques. He is known by the name of Col. Wood, is he?

Ans. Yes, sir.

Q. Do you know whether or not there is a stage or place for an exhibition of dramatic plays in that establishment?

Ans. Yes, sir; I do.

By Mr. Bates:

Q. Do you know that personally?

Ans. I do.

Q. Do you know whether there is a company to represent plays?

Ans. Yes, sir.

Q. Do you know whether that has been the case since 1865 and 1866?

Ans. It has.

95 Q. And that plays have been constantly represented in that building, which is in the city, is it?

Ans. It is on Randolph street, and they have a stage in this building, in this city.

Q. You say you think these plays were represented at those times?

Ans. Yes, sir; I think they were.

Q. Who has been the proprietor of that establishment during the years 1865 and 1866?

Ans. Col. Wood, so far as I know; I only know that by seeing his name printed so.

Re-cross-examination.

By Mr. Bates:

Q. Mr. McVicker, do you know personally that Mr. Clarkson resides in this city? he has his place of business here, and that you do know, but do you know that his home, his residence is in this city?

Ans. I don't think, according to law, I know much of anything, Mr. Bates.

By the Court :

He knows that Mr. Clarkson resides here, because he has met him here, seen him daily or often; he has a place of business here, and he acts as though he resided here; have you ever been to Mr. Clarkson's house ?

Ans. I have; I say I could go to his house, but I couldn't name the street; I have the same knowledge of Mr. Clarkson being
96 a resident of Chicago as I have of Judge Drummond being judge of this court; the knowledge is the same

Q. You have seen the judge on the bench ?

Ans. And I have seen Mr. Clarkson at his house.

James T. Flynn, a witness called in behalf of the plaintiff, being duly sworn, was examined in chief by Mr. Clarkson, and testified as follows :

Q. Mr. Flynn, what is your occupation, your business, and how long have you been in it ?

Ans. Cashier of the Tribune office.

Q. Are you the advertising agent of the Chicago Tribune ?

Ans. Yes, sir.

Q. Have you been so in 1865 and 1866 ?

Ans. Yes, sir.

Q. What are those three books ? (indicating.)

Ans. Files of the Tribune.

Q. For what year ?

Ans. 1865 and 1866.

Q. Turn to December, 1865 and January, 1866; I wish you to take this first book, from July to December, 1865, and turn if you please to that newspaper—these are the bound files of the Chicago
97 Tribune—what is the Chicago Tribune ?

Ans. A daily newspaper published in Chicago.

Q. Look at the date of that paper, October 19th, 1865, and under the head of "amusements," look at it under the head of "amusements," October 19th, 1865, and see what you find there under the head of "Wood's Museum ?"

(Witness reads the advertisement.) "Bourcicault's Colleen Bawn.'

Q. Turn to October 20th, read that aloud to the jury.

(Witness reads the advertisement of October 20th.) Also Bourcicault's "Colleen Bawn."

Q. Now turn to October 21st, what do you find there ?

Ans. It is just a repetition of the other.

Q. Is that Saturday ?

Ans. That is Saturday.

Q. What does it say about afternoon and evening performance ? (Witness reads the advertisement.)

Q. Two times, then, "Bourcicault Colleen Bawn" on that day ?

Ans. Yes, sir; that is on the 21; once on the 19 and 20.

Q. By whose authority; who put those advertisements in the paper and paid for them?

(It is admitted that Col. Wood ordered and paid for the advertisements.)

98 Ans. They were ordered for the Museum, whether by Col. Wood or not I could not say; they were ordered from that establishment.

Q. Now take January, 1866, the first of the files of 1866, from January to June; turn to January 4th; what do you find there?

Ans. January 4; "Col. Wood's Museum; extra announcement." That isn't "extra great benefit." It is a repetition of the others.

Q. Turn to March 17. What day of the week is that; what do you find there?

Ans. Saturday; St. Patrick's day, "Wearing of the Green" on Saturday afternoon, and "Great matinee," and on Saturday evening, the "Colleen Bawn."

Q. What do you find playing at McVicker's theatre at that time?

Ans. "The Child of the Regiment."

Q. Turn to March 23.

(Witness reads the advertisement.) "Bourcicault's Colleen Bawn.'

Q. What was playing at McVicker's?

Ans. "Old Phil's Birthday."

Q. Turn to May 7, 1866.

Ans. The last week of Mr. & Mrs. Buchanan, the Octoroon; Wood's Museum, also "The Octoroon."

Q. Turn to May 8.

Ans. McVicker's theatre, the Octoroon; Col. Wood's, the

99 Octoroon.

Q. Turn to May 9. State what day that was, and how many performances there were.

Ans. May 9, Wednesday, Col. Wood's Museum, great American drama, great matinee; and also in the evening will be presented the Octoroon.

Q. Turn to May 10.

Ans. The Octoroon.

Q. May 11th.

Ans. The Octoroon.

Q. What day was that?

Ans. Friday, May 11.

Q. Now the 12th.

Ans. The Octoroon; that was Saturday. Matinee, Saturday afternoon, and also in the evening, will be presented for the last time.

Q. That is twice on Saturday?

Ans. Yes, sir.

By a juror:

What was the play at McVicker's?

Ans. "The Octoroon" and "The Robbers."

Q. Now turn to November 5, 1866. That is the next book.

Ans. Col. Woods's Museum, new dramatic sensation of absorbing interest. Monday evening, November 5, for the first time, the "**Avalanche, or Under the Snow,**" with novel machinery.

100 Q. Now the next day is November 6?

Ans. That is a repetition of the other days.

Q. November 7th?

Ans. That is a repetition; that is Wednesday afternoon, November 7, grand matinee, at 2½ o'cl'k, and also in the evening, at a quarter before 8.

Q. Turn to the 8.

Ans. That is Thursday.

By Mr. Bates:

Have you examined those two books which you showed of Wood's, as a correct statement?

By Mr. Clarkson:

Yes, sir; personally, twice; on the 8th of November, Pauvrette, or the Avalanche; 9th of November, once; 10th, Saturday, two times; 12th, Monday, once; 13th, once; 14th, twice; and the 15th, once.

Q. Go to this book, if you please, and turn back to October 9th, 1865, where you find Bourcicault's drama of the "Colleen Bawn," in Wood's Museum. State, under the head of "McVicker's Theatre," what you find there at the bottom of that date.

Ans. In rehersal, the "Colleen Bawn." It is admitted, that at the time these plays were advertised, they were performed at the Museum.

By Mr. Bates:

101 I would not like to admit that we represented these identical plays.

By the Court:

No; but that these pieces called the "Colleen Bawn" and Octoroon were played there those nights.

By Mr. Bates:

Yes, sir.

The deposition of John H. Selwyn was here read in evidence by the counsel for the plaintiff, and is as follows, to wit:

102 *Deposition of John H. Selwyn, taken before John A. Osborn, commissioner, in the city of New York, on the 14th day of May, A. D. 1867, on behalf of the plaintiff.*

And the said John H. Selwyn, being about the age of thirty-one years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said John H. Selwyn, and he did thereupon depose, testify, and say as follows, viz:

I am agent for Dion Bourcicault, the plaintiff in this suit. I know Mr. Bourcicault; have known him since 1857. I made his acquaintance in Boston, Massachusetts. Since 1857 I have resided in Boston and New York, always in the United States. I reside now in New York. Mr. Bourcicault was living in Boston at the time I made his acquaintance. He moved from Boston to New York; can't say when.

I saw him in New York in 1860; can't say how long he continued to reside in New York after that; can't say, positively, when he left New York. I know where he is now; he is living now in
103 England. I know and am acquainted with a play called "Andy Blake;" I have played in it. Dion Bourcicault is the author of the play "Andy Blake." I know another piece called "Pauvrette;" Dion Bourcicault is the author of that play. I know another piece called the "Colleen Bawn;" and Dion Bourcicault is the author of that play. I know a piece called "Octoroon;" Dion Bourcicault is author of that play also. Neither the "Colleen Bawn" or the "Octoroon" have ever been published. "Andy Blake" has been published—published by Samuel French, of New York, in January, 1857; can't swear, positively, to the date. I have a copy of that play; the play called "Andy Blake" is offered in evidence, marked Exhibit "A." J. A. O.

(Defendant objects to the introduction of play "Andy Blake," on the ground that no copyright is shown, and that it does not appear that the plaintiff has complied with the laws of the United States to entitle him to a copyright.)

I have seen other copies of the same edition of this play; the Exhibit "A" is a correct specimen of that edition of the play. The play "Pauvrette" has been published—published in October, 1858;
104 can't swear to the date. I have a copy of that play, offered in evidence, marked Exhibit "B," J. A. O.

(Defendant makes same objection to the admisson of this exhibit as that to Exhibit "A," J. A. O.)

I have seen other copies of this edition; they were similar to this, and this exhibit is a correct specimen of this edition of the play. I know Henry D. Palmer; he is now in England. I never saw Bourcicault before 1857, in this country. I came to this country in 1854. Before I saw Bourcicault in Boston, in 1857, he was living in New York; can't say how long he had been living in New York; can't say positively where plaintiff was living in August, 1856. To the best of my knowledge, plaintiff lived in New York in Sept., 1858. Between the time I saw him in Boston, in 1857, and the time I saw him in New York, in 1860, he lived in New York, to the best of my knowledge. I saw him frequently between these periods. He kept house in New York, in East 16th or 17th streets. I saw plaintiff the first time in 1857, in the month of March. He returned to New
105 York in about a month or six weeks; after that he remained in New York, generally, except on short absence. Prior to 1857, I can't say or fix the time how long he had resided in New York.

By Mr. Crossby:

I have been Bourcicault's agent since December last. I never had any personal acquaintance with him prior to 1857. Can't say of what country the plaintiff is a native; can't say wether he is an Englishman, Irishman, or Frenchman. I did business for plaintiff before I became his agent, arranging for the production of his plays in Bos-

ton; my own occupation is theatrical manager. Plaintiff was in Boston, for several indefinite periods, ranging from two, four, and six weeks; he boarded while there. The indefinite periods I speak of were before 1857. I have no personal knowledge where he lived before 1857. In 1857 he lived in New York and Boston, from my own personal knowledge. Can't say when Bourcicault came to America. He returned to Europe about 1861; has not been here since. I have never heard, and have no knowledge when he first came to this country; can't say that plaintiff was in this country in 1854,
106 1855, and 1856, but believe he was. I know that Dion Bourcicault is the author of the plays called "Andy Blake," from public and professional report, and from his own statement of the fact. I have no other knowledge that Bourcicault is the author of the plays called "Octoroon," "Pauvrette," and "Colleen Bawn," than what I have testified to in respect to "Andy Blake."

I have been connected with theatrical matters all my life. I never saw a play called the "Young Scamp." I have heard of such a play; never saw the book or manuscript of the play; never saw the play called the "Young Scamp" performed in Europe. Have no idea who is the author of it. I don't know that there is such a play as the "Young Scamp."

I have not as agent of Mr. Bourcicault or any personal interest in the sale of the books "Pauvrette" and "Andy Blake;" the same can be purchased by anybody. I know that there have been many performances of the plays called "Andy Blake" and "Pauvrette" within the last three or four years.

Q. Have there not been performances of "Andy Blake," "Pauvrette," "Colleen Bawn," and the "Octoroon," in theaters
107 in this country for a number of years past, without any license being paid therefor, and with the knowledge of Mr. Bourcicault, and with your knowledge since you became his agent?

(Obj. to by plaintiff as irrevelant.)

A. Not to my knowledge.

Q. Have not these four plays been generally performed in the "United States," without the payment of a license?

(Obj. to as irrelevant.)

A. Not to my knowledge. I have not been in Europe within the last three years. I don't know that Mr. Bourcicault failed in business in Europe.

Q. Do you not know of instances of these four plays being performed without the payment of a license, and without prosecution by Mr. Bourcicault.

(Obj. to as irrelevant.)

A. I do not. I have never seen the manuscript of "Andy Blake," or "Pauvrette." I know the Exhibit "A," J. A. O., to be a correct copy of that edition of "Andy Blake," by performing in the piece under the direction of Mr. Bourcicault; this would show it me to be the correct edition by studying and rehearsing the part
108 I represented, and by reheasales and reading the same.

Re-direct.

Can't state positively, but to the best of my knowledge, "Andy Blake" was played first in this country in New Orleans; I first assisted in its play at Boston, in 1857.

Q. Who at that time claimed to be owner of the piece and exercised actual ownership over it, if anybody?

(Obj. to by defendant's counsel on the ground that evidence going to show a claim of ownership and acts of ownership is irrelevant to this issue, and also that the attention of the witness should be called to facts and should not be asked to give his construction as to acts of ownership.)

A. Dion Bourcicault.

Q. What did he do in relation to the piece?

(Obj. to.)

A. Announcing himself on the bills and advertizements as such author or owner, and stating so publickly.

(The above answer obj. to on the ground that the plaintiff's own acts are not evidence for himself when offered by himself.)

The piece was performed under his superintendance. I
109 know of his performing similar acts of ownership over the other three peices, and especially with regard to "Octoroon," as I arrainged with him for the production of the peice in Boston.

(Same objection by defendant as to showing acts of ownership.)

JOHN H. SELWYN.

Subscribed and sworn to before me, this 14th day of May, 1867.

JOHN A. OSBORN, *U. S. Com'r.*

Endorsed: Opened June 17, 1867, for Mr. Clarkson, pl'ff's att'y. Wm. H. Bradley, cl'k.

"Ex. B, J. O. A."

[Front cover.]

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(Catalogue continued on third page of cover.)

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Cast of the characters, as performed at Niblo's Garden, New York, October, 1858.

Count Maurice ..... Mr. George Jordan.
Bernard ..... Mr. Bourcicault.
Michel ..... Mr. A. H. Davenport.
Martin ..... Mr. Whiting.
Intendant .....

Servants, villagers, and Russian soldiers.

Duchess de Beaulieu ..... Mrs. C. Pope.
Marie ..... Miss Ada Clifton.
Louise ..... Mrs. J. H. Allen.
Pauvrette ..... Miss Agnes Robertson.
Therese ..... Miss Barnet.
Villagers, and two lady's maids.

The first act occurs in Russia, in 1812. The rest of the play in Switzerland and the south of France, in 1830.

An act supplemental to an act entitled "An act to amend the several acts respecting copyright," approved February third, eighteen hundred and thirty-one.

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PAUVRETTE.

Act I.—Scene: A ruined cottage or hut near Wilna, in Russia. A smouldering fire, r. h. Music, distant roll of drums. Cavalry trumpet call.

Enter Michel cautiously; looks around.

Michel. Nobody at home ! that is lucky. At every sound I expect to see an infernal squad of Cossacks jump up all around me. Ha ! a fire ! I can warm my frozen fingers.

The Duchess looks in from door.

Duch. A French uniform ! Then I may venture forth. [Advances.]

Mich. I don't mind meeting a man face to face, but I don't like being taken in the rear.

Duch. Friend !

Michel. [Shouts.] Cossacks ! [Draws an old bayonet.] Come on.

Duch. Do not fear. I am a woman—not an enemy. I seek the regiment of Colonel Lafere.

Michel. Here we are—I am the regiment.

Duch. You ! You are only a drummer boy.

Mich. I am all that remains of the 14th Imperial Chasseurs ! Out of 1,200 bayonets that left Moscow five weeks ago. on our retreat to France, one-half of us were drowned in crossing the Dneiper on the ice. Hunger and cold served out billets to the rest. Yesterday we marched out of Wilna seventeen strong, the colonel at our head, carrying his infant child like a knapsack.

Duch. His child—the little Louise—she lives, then?

Michel. She did till sundown last night, when a squadron of Cossacks fell upon us like a hailstorm, and the 14th Imperial Chasseurs was reduced to me.

Duch. The colonel was killed ! are you sure?

Michel. As sure as——hush !

Duch. What?

Michel. Cossacks ! [He creeps up and looks off.] No ; 'tis a French uniform, and I recognize the facings of our regiment. 'Tis our vivandier, Marie Bernard, and her husband, our sergeant.

Enter Bernard, carrying Louise, and Marie carrying Marguerite.

Michel. Bernard !

Bern. Michel—alive !

Michel. You are wounded.

Bern. My leg is broken—hush. Marie, my rose, lay the children near the fire; madame will excuse us. Michel, take this one. [Marie makes a bed for the infants near the fire, r. h.] There—gently. Poor little things, how soundly they sleep. Place them side by side. Only to think—now, there's the child of a vivandiere and the child of a duchess sleeping together ! Misfortune gives us strange bed-fellows.

Duch. [Aside.] What does he say? The child of a duchess!

Bern. Marie, come here, my brave girl, and listen.

Marie. I am here, Bernard—speak. [Marie advances, the duchess goes up and gazes on the children.]

Bern. Marie, it is useless to conceal it—I can march no more. The great halt is sounded for me, and here I must rest.

Marie. Well, Bernard, the Cossack spears will find us both.

Bern. My brave wife! no, no. You forget our children—our little Marguerite and Louise, yonder, the child of our colonel. Did we not swear that we would convey his infant to the convent of St. Denis?

Duch. [Aside.] My child—my Louise! She is here! [Advances rapidly to the bed on which sleep the two children.]

Marie. Have I the strength to carry both children? We should surely perish.

Mich. No, but I can carry one of them; that is what Bernard means.

Bern. The frontier is within five leagues of this spot. The lives of these little ones depend on our strength to reach the Memel to-day. Michel is not wounded as I am.

Michel. I am ashamed to say that I am complete in every particular.

Bern. With his help you ought to be across the river by midnight; then you will both be in safety.

Marie. But you, Bernard; do you command me to leave you here to die miserably and alone?

Bern. I shall die in obeying the last command of our colonel. As he placed his infant in your arms he held up to your lips his cross of honor, wet with his dying blood. You kissed it, and we swore to convey our charge to the convent of St. Denis, in France—the asylum for the orphans of the brave. Go, then, Marie. God will protect you. Leave me in his care; he will deal justly with an honest soldier.

Marie. Bernard, I have never disobeyed you. I am ready.

Bern. Farewell my brave and good wife. Return to our village in Switzerland, and when my wounds are well I will rejoin you there.

Marie. Never, Bernard, never; something tells me that this day is our last together on this earth—and in this place we part forever. [Falls at his feet.]

Duch. [Advancing.] You are mistaken—I can save his life. Here is a pass from the Russian general, protecting the bearer.

Bern. Who are you? and how came you within the lines of the French army, yet under the protection of the enemy?

Duch. I am the wife of your colonel, and one of these children is mine.

Bern. How comes the wife of a French officer in league with the Russians?

Duch. When the revolution in France overthrew our family, my brother emigrated and entered the Russian service, while I remained in Paris. Our estates has been confiscated, but were restored to me

by your Emperor, upon condition that I should marry one of his republican officers. So I became the wife of Colonel Lafere. At Moscow, I saw that Napoleon's cause was lost; so I fled to seek my brother's protection under the Russian flag.

Bern. In short for a sum of money you sold yourself to a man you despised. You became the mother of his child, which you looked upon as the offspring of shame—and when your bargain seemed to turn out badly, you repudiated the transaction.

Michel. That's it—boiled down to a jelly.

Duch. I owe you no justification of my conduct. I came to seek my child. My brother, the Duke de Beaulieu, is dead, and the infant yonder is heiress to his title and estates.

Bern. Ah! And it is your brother's heiress, then, you come to seek, and not your husband's child.

Duch. Colonel Lafere bequeathed to you a trust—I am here to relieve you of it—and in return, I will save your lives.

Bern. Madam, your demand is just, I confess it.

Marie. But my oath, Bernard—I swore to convey Louise to France.

Duch. The rights of a living mother absolve you from your pledge to her dead husband. But why should I ask for that which I can compel you to yield. In a few moments the Russian troops will be here, and I can enforce my demand.

Bern. It is true; madam, you can do so, and we must submit.

Marie. Bernard, you will not part with Louise.

Bern. Do you not hear, Marie? A mother's claim, who shall resist? Besides, we are in her power. Forgive my wife, madam; she has cared for your little Louise since the day you deserted your husband—that is, a few weeks after you gave her birth. We have loved her as our own. Had we known that she was noble and rich, we should not have not taken that liberty.

Duch. Here is the safe conduct which will secure your safety across the frontier, and let this purse of gold repay your care.

Bern. [Accepting the purse and paper.] I humbly thank your generosity.

Michel. [Aside.] Is Bernard going to sell the girl?

Marie. Be silent.

Bern. [Crossing to the couch, r. h.] Madam, the Duchess of Beaulieu, behold these two children—both of the same age, the same sex—see, together, enfolded in each other's arms, they lie—the child of the duchess and the child of the peasant; one of them is yours!

Duch. Yes, but I have not seen my infant since its birth; therefore, I cannot——

Bern. Although the same rags clothe their shivering forms; although the same hunger has withered their little cheeks: still, of course, the noble blood of the one shall distinguish it from the other. Take that which belongs to you! Look well; look close; does not that sweet mystery of nature, the mother's heart, flutter like a dove in your bosom, and light down unerring on the creature you have made? Your child is there, woman—take it.

Duch. I—I cannot choose.

Bern. You invoked a mother's rights. Well, exercise them. Your child is there, before you. Why, call to it—will it not know a mother's voice, and lift its little hands to seek your breast?

Duch. Man, do not mock me! Which of these is my child?

Bern. Aye, madam, which? That secret is known only to me—to my wife.

Marie. And not all the Cassacks of the Don could tear it from us. There is your money, madam; we cannot sell the promise we gave your husband.

Michel. And there is your safe conduct—it will take you back again. We need none of it—a soldier's passport is his bayonet.

Duch. You shall not escape me. Oh! I will discover this secret still! [Exit.]

Marie. She will return, Bernard, and bring the Russians on us.

Bern. I know it, Marie; so do you listen well to my instructions.

The Duchess reappears, at the window.

You, Michel, shall take charge of Marguerite, our child.

Michel. Go on. What's to be my route?

Bern. Make straight for our village, St. Didier on the Alps, and leave my child with the old curate of the place.

Michel. The Alps in Switzerland—that is about one thosand eight hundred miles, somewhere out there.

Bern. You, Marie, take little Louise, our colonel's child, and hasten to Paris; once there, you will find aid and protection.

Duch. [Aside.] The woman will take my child. That is enough. [Disappears.]

Michel. Before we start, I will make a tour of inspection. [Exit.]

Bern. Poor innocents, still sound asleep! No wonder the mother could not pick out her own; for they do look so nearly alike, that if I lost sight of them for a month, I could not tell which was our Katrine.

Marie. Ah, Bernard! I could tell mine at once. Besides, you remember, as I carried our child on my back, the bullet that wounded me in the neck, carried away also the tip of Marguerite's ear.

Bern. So it did. And I remember too, although the blood flowed, the little one only laughed as I bound up the wound. God bless her! she is a soldier's child.

Marie. [Laughing.] When she is married, she won't ruin her husband in earrings—will she? [Distant drums.]

Bern. Hark! 'tis the rappel. The enemy is on us. Quick, Marie! Come, or our escape may be cut off. [Calls.] Michel! Michel! [Exit.]

Marie. 'Tis a pity to separate them. Come, my pretty Marguerite; my darling one, we must part; and your place in this heart must be given to your foster-sister, Louise. Say farewell to her, and now to me—to me, your mother. Bless you! God bless you, my child!

[Exit, embracing her infant, which she carries out. Drums nearer.]

Enter Michel, rapidly, r. h.

Michel. Cossacks! Quick, Marie! where's the child? They are upon us! [Looks round.] Gone! it can't be! No; there is the child still.

Bern. [Calls, outside.] Michel!

Michel. There he is.

Marie. [Calls, outside.] Michel!

Michel. They are off, I see. Scared by the approach of the enemy, they have left me to take my burthen and follow them. [Calls.] Hollo! I'm coming. Come along, little Marguerite. Come to uncle Michel. Poor little devil! she sleeps like a top. I wish she would sleep like that all the way to Switzerland. [Muskets and drums, outside.] Cossacks! [Runs off, bearing Louise.]

After a moment, re-enter Marie, with Katrine.

Marie. Quick, Michel! Here is Marguerite. The enemy already has entered the wood. Where is he—gone? and the child, Louise! He has taken the infant of the duchess. [Runs to the window—calls.] Michel!

[A volley of musketry is heard. Marie staggers back, shot—she falls, r. h. Enter the Duchess.

Duch. You are wounded! [Runs to her.] Speak, woman; you are hurt.

Enter a Russian officer and six soldiers—others appear at the windows. Bernard appears, as a prisoner.

Stand back, sir! I am the Duchess de Beaulieu—sister of your general. Here is my passport, and this infant is my child.

[The Duchess takes the passport from the table where Michel has left it, and hands it to the officer, who reads it, as the act drop falls.]

[End of Act I.]

A lapse of eighteen years is supposed to occur between the first and second acts.

Act II.—Scene: A village on the Alps, near the great St. Bernard. A rustic inn, l., with table and stools. The road leading to the valley is supposed to descend, r. 3 e. Rocky paths leading off, r. and l. 4 e. In the distance is seen the mountain range of the Alps, covered with snow. A bench, l. h., in front. Music.

Martin runs in from road, r. u. e.

Martin. [Calls.] Therese! Ma'am Therese! Quick!

Enter Therese, from the inn, r. h.

Here are travelers coming up the mountain.

The. Travelers! [Calls to inside of house.] Ho! Pierre! Madelaine! [Goes up, r.]

Enter Pierre and Madelaine, from the inn, while the Duchess, leaning on Michel, enters.

Michel. Gently, madam—so. Pray, my good friends, don't stand staring and bobbing there, but bring a seat for the duchess.

The. The duchess! Madelaine! Martin! Pierre! a seat for the duchess! [They all four seize a seat and bring it forward.]

Michel. So—that is well. Now prepare rooms, and dinner.

Martin. Yes, my lord.

Michel. Don't be a fool. I'm no lord, but simple Captain Michel Carrey.

Martin. Captain Michel Carrey! the hero of Algiers!

Michel. Will you go about your business?

The. A hero and a duchess! Oh, Martin! what an honor! We must send and tell all the village of St. Didier.

[Exeunt, into inn, all but the Duchess and Michel.

Duch. So this is the village of St. Didier.

Michel. The same, where I arrived eighteen years ago, with the child of poor Bernard.

Duch. Eighteen years! What changes have taken place!

Michel. I can see none in you. You are the same in beauty and in pride.

Duch. Where is Louise?

Enter Louise.

Louise. Here I am, mamma.

Duch. What detained you? Where is Maurice?

Louise. He climbed a rock by the roadside to obtain a view of the scenery. Oh! here he comes.

Enter Maurice.

Duch. Come hither, Maurice.

Mau. My dear aunt, consider me at your feet. Do you know that I have already hired a guide to ascend the mountain? They say the view at sunrise from the summit is superb.

Duch. Count Maurice de Grandval, I have a view to offer you here, [points to Louise,] much more superb—your future bride.

Mau. Of course. Oh, yes, much more.

Duch. Sit down, then, and listen to me.

Mau. I am all obedience and attention.

Duch. Eighteen years ago ——

Mau. Pardon me, Duchess; as I presume from the start that we are for a long session, will you permit me to light a segar?

Duch. He is incorrigible.

Mau. Proceed. The practice, smoking, is vile, undignified, and detestable.

Duch. Maurice—my dear Louise—the moment so anticipated by me has arrived—the hour of your marriage. Your marriage, my children, has been the sole object of my life—the goal of my ambi-

tion. Maurice, do you know why I have been so anxious for this union?

Mau. Firstly, because Louise is the heir of Beaulieu, and I have run through my fortune. And secondly, from the natural desire to bring two lovely beings together.

Duch. If I were not fonder of you than I ought to be, I should have postponed this marriage until you had spent two years in prison for debt.

Mau. Cruel Duchess! I would have written you such a beautiful penitent letter, that you would have opened your purse and your arms simultaneonsly, and justified that confidence my creditors always expressed, that you would evidently liquidate.

Duch. Was there ever such a reckless boy? What is to be done with him?

Mau. Ask my cousin Louise.

Louise, Maurice!

Michel. I think we had better return to the "eighteen years ago."

Duch. Eighteen years ago, when the republican Emperor Napoleon ruled France, I was obliged to place the fortunes of my house under the protection of the Colonel Lafere.

Michel. You mean that he was your husband, madam.

Duch. And the father of Louise. Those were the only faults I ever found in him. In other respects I believe that he was a good kind of person. She bears his name; and to wipe out from the scutcheon of Beaulieu the traces of this misalliance ——

Mau. You would cover the blot with my count's mantle and the name of Chevreuse—so distinguished amongst the Shylocks of Paris.

Duch. More than that—I have the promise of his Majesty that the duchy of Beaulieu will be revived in your favor—transmitted through me to your race.

Mau. I am overwhelmed.

Duch. We shall arrive to-night in my Chateau of Grandval, where already are assembled the heads of our family to witness the ceremony.

Louise and Mau. To-night!

Michel. Married to-night!

Louise. Married to-night! so sudden! My dear mamma, I am quite unprepared ——

Mau. So am I.

Louise. So solemn an occasion ——

Mau. Fraught with such fearful consequences ——

Louise. But, sir, it is not for you to share my feelings.

Mau. Eh? No—that's true—I mean—of course I am electrified with delight at the unexpected presence of—my last moments—that is, I sympathise so deeply with your joy ——

Louise. But I'm not glad, sir, and would not have you presume.

Mau. Of course not. You hear, Duchess, the dear girl objects in the strongest manner ——

Louise. No I don't, sir!

Mau. Oh! I thought you did. My own impatience naturally led

me to suppose—you would feel the same—and would like a little time to compose your mind, and—a—take leave of your friends. No, that is—just as you like—of course it is—indifferent to me.

Louise and Duch. Indifferent!

Mau. I mean—I'm ready to ——

Michel. Count Maurice fears that any undue impatience on his part might be mistaken for a desire to possess the fortune of Louise rather than her love.

Mau. That's it. My creditors have knocked all the poetry out of my marriage by always talking of it as a receipt in full for my debts.

Louise. Oh, how delightful, if they would take all we have and leave us nothing but love in a cottage!

Mau. [Coldly.] Yes, that would be perfectly charming.

Enter Therese.

The. The rooms of the ladies are ready.

Duch. Come, Louise. [Exeunt Duchess and Louise.]

Mau. Michel, my dear, honest friend, what am I to do? Advise me how to act.

Michel. What is the matter?

Mau. That dear girl loves me to distraction—so my aunt informs me. I have tried to reciprocate her feelings, but I cannot feel otherwise than as a brother towards her. I wish I could, for I want her fortune. The Duchess has set her heart upon this marriage, and I love my aunt, with all her faults, too much to wound her in her dearest and cherished hopes. What can I do?

Michel. Maurice, it is impossible that you can help loving Louise.

Mau. That's the worst of it. I know I ought to love her, but that is the fault of my character; when I know I ought to do a thing the sense of duty sets me against doing it at once; and after marriage—when she will become entitled to my affection, and can make a kind of legal demand upon it—I foresee an utter paralysis of my whole system. What am I to do? Advise me.

Michel. As a gentleman, consult your own honor.

Mau. In this case I would rather consult my feelings as a man. To protect my honor as a gentleman, I ought to pay my debts; but my honest part tells me that to pay them with the fortune of Louise, handed over to me in consideration of my oath to love her, is very like obtaining money under false pretences. Now I want you to reason that nonsense out of me.

Michel. Maurice, give me your hand. I am a republican, but hearts like yours that pass through the fire of society and retain their simplicity and goodness—egad! they almost reconcile me to nobility.

Enter Louise.

Louise. Maurice, mamma inquires for you.

Mau. I fly. Louise, you love me do you not?

Louise. Of course I do, sir.

Mau. I knew it. [Exit.]

Louise. He is gone. Dear Michel!

Michel. Mademoiselle!

Louise. I want you to advise me.

Michel. [Aside.] Has she discovered the secret of Maurice?

Louise. My cousin loves me. Mamma has set her heart upon this marriage, and I, since childhood, have been taught to look upon Maurice as my future husband; but now the time has come, I recoil from this union—I do not know why.

Michel. [Aside.] A mutual aversion! Oh! if I can only prevent this marriage!

Louise. Make haste! Tell me what to do.

Mich. Why do you not avow your feelings to Maurice?

Louise. Because he loves me to distraction—so my mother tells me—besides he is in debt, and my fortune alone can save him. Oh! I cannot refuse him, can I? Advise me.

Michel. Mademoiselle——

Michel. You ask me to advise you, judge if I can do so honestly. For the last two years I have loved you. I knew that my feeling was an outrage, a piece of folly, but I could not help it. When first I saw you, your face, your look, your voice reminded me of one who was kind and good to me when I was a poor friendless boy—I mean Marie Bernard, the kindest and best of women—the vivandiere of our regiment——

Louise. My nurse!

Michel. Memory, association, your beauty, your honesty of heart, all open fire on me, front, flank, and rear. Mademoiselle, I am only a miserable, low-born orphan; my only relation was the policeman who picked me up on a doorstep and educated me in a poor-house; yet I, the wretched, ugly, cub of a beggar have dared to love you, the heiress of a duchy! I'm fit for a lunatic asylum.

Louise. Michel!

Michel. Farewell! I'll go there at once, or to Algiers and get knocked on the head. Don't let what I have said annoy you; I am better now it is out, and my heart is clear. Tell Maurice and the Duchess, and please add that I had not the courage to see them before I left.

Louise. Michel, you are not going!

Mich. Yes; under the circumstances it would not be right to stop. Besides, I could by a single word break off this marriage, and if I stopped I must speak out. So I must go. Farewell! [Exit.]

Louise. Michel—stop—Michel.

Enter the Duchess, followed by Martin and Therese.

Duch. Was there ever such a boy?

Louise. What is the matter mamma?

Duch. Maurice is preparing to ascend the mountain. He will never be back in time—we must reach Grandval by four o'clock.

[Pauvrette sings outside, as she descends the mountain.]

Martin. Ah, here comes Pauvrette.

Louise. Pauvrette, what a pretty name! Who is she?

Martin. She is a poor orphan girl who gathers the stray sheep of our farmers, when they get lost in the mountains. When the early snows fall the cattle tracks are filled up and the poor things used to be cut off from the plains, and died of cold and want.

The. But now they know the voice of Pauvrette, and they come to her hut in the mountains, near which is a great cave, where every fall our peasants carry fodder to support the sheep through the winter, and food for the poor Pauvrette.

Duch. Food! is the child shut up there for all that time?

Martin. Yes, madam. [Music.]

Enter Pauvrette. Louise runs to her and leads her forward.

Duch. Poor child, she looks as wild as a hawk.

Martin. What brings you down to the village, Pauvrette?

Pauv. The signs have come. I heard the black wind last night, and the echoes brought me sounds of the avalanche. The swallows are leaving; the winter will be early this year.

Martin. All is ready for you, Pauvrette. Your provision of black bread and the fodder for your sheep; the villagers will take it up to-morrow.

Pauv. To-morrow may be too late—to-day.

Martin. To-day? [Calls.] Ho! Pierre! Madelaine!

Enter the servants. Therese goes into house and brings Pauvrette food.

Hasten down to the village, tell the farmers that Pauvrette is here and wants her provisions for the winter; and tell the curate also, you know he always says a prayer in her cottage, before leaving the child who must pass three months under the snow. [Exit Madelaine and Pierre.]

Louise. Three months under the snow! What does he mean?

Therese. It is true, ladies. Three months alone in the mountains!

Pauv. Yes—the snow falls little by little until it fills up the hollow and the precipice, then it covers up the roads and paths, then it rises and rises, day by day, all around—all round—until it blocks my cabin door. Then comes the avalanche!

Duch. and Louise. The avalanche!

Pauv. The wind brings it down, and first it comes in great blocks of ice and hardened snow; trees, torn away, and big stones and rocks that fall with a noise like thunder. Then comes a roar from the earth. That is the avalanche—a mountain of snow rushes down and covers all; oh! then my cabin and the stable, all are well buried—twenty, fifty, it may be a thousand feet above our heads—I don't know. And above all, they say, is a sheet of white, like a sea of snow. There I am for three months.

Louise. Oh mamma! how terrible!

Duch. Poor child! here, accept this purse.

Pauv. Money! What am I to do with it up there? I have no mother, no father to give it to.

Duch. But you are poor.

Pauv. Poor! No. The poor are in the village. I want nothing. Here, Ma'am Therese, give that to the curate, that he may pray for my father, if he lives, and my mother, who is dead. [She sits, l. h., and eats and drinks.]

Duch. Unfortunate girl—but I suppose such persons must exist. [Music. Exeunt Duchess and Therese into house, r. h.]

Louise. So, your name is Pauvrette?

Pauv. Yes.

Louise. Were you born here?

Pauv. No. A soldier brought me here in his knapsack eighteen years ago. He left me with the curate, and went away; he forgot to leave my name, so they called me Pauvrette.

Louise. Would you not like to leave this dreadful life and live happily, free from peril, amidst friends who would love you?

Pauv. Friends!

Louise. There is something about you which speaks a loving heart. You shall live with us. Yes, at once you shall quit your mountain home. You are my own age—come with us. You shall be my maid—no, my companion. Will you?

Pauv. I can't. I have let myself to the farmers of the valley; I have eaten their soft bread through the summer—I must take the hard crust during the winter. Besides, I cannot leave this place.

Louise. Why not?

Pauv. They say that my father may be alive still, and some day he may return.

Louise. My heart clings to you, Pauvrette. Perhaps you may change your mind; and should you ever need a friend or a shelter, you will promise to seek me.

Pauv. I will. Where do you live?

Louise. Here is my address. [Writes in her pocket book with a pencil.] And if you need assistance, you will write to me.

Pauv. I—write!

Louise. That is true—I suppose you have never learned to write!

Pauv. How should I?

Louise. There! [tears a leaf] there is my name and address.

Pauv. [Rising and putting the paper in her breast.] I will wear it with a string round my neck.

Louise. Pauvrette, let me look in your eyes—you are like somebody that I know and that I love. I cannot think who it is. Ah! yes, I have it. [Runs to the house, calls] mamma! mamma!

Enter the Duchess.

Come here; look at Pauvrette—look well—can't you see a likeness to somebody?

Duch. Indeed, I cannot.

Louise. To you, mamma! to yourself! her eyes especially—when you are kind and good to me. It is the very same look.

Duch. Really, Louise, you are very complimentary.

Music. Enter villagers, Martin, Madelaine, Pierre, the curate o village, village girls, all carrying the different provisions of Pauv rette for the winter.

Martin. Come, Pauvrette, our people are ready, and see, the curate will as usual accompany you.

Louise. Must she go?

Pauv. Adieu, mademoiselle.

Duch. But this child might fall sick in her prison of snow.

Louise. And she might die.

Pauv. And who would care? The animals, perhaps, who might miss my voice—none care for me. My mother is dead.

Martin. Come, Pauvrette.

Louise. Stay—take this ring—I bought it for my husband that is to be. Take it in remembrance of me. Adieu, Pauvrette.

Pauv. [Drawing out the paper.] I don't know how to read; what is your name?

Louise. Louise.

Pauv. Adieu, Louise.

Louise. Adieu.

[Pauvrette, the curate, and all the peasants but Therese and Martin, go off, l. u. e. Duchess and Louise go into house.]

Martin. Poor little Pauvrette; I never see her go for the winter but I feel as if I could cry.

The. Were she to fall sick, all all alone—oh, Martin; if it were our child, how should we feel?

Martin. But she is not our child, so don't talk of it. But I must prepare for our excursion. The young lord is for going up the mountain, and I have promised to guide him.

[Music. Enter Bernard; his dress is ragged and old, worn out with travel.]

Bern. My home! My native village!

Martin. Who is there?

The. A poor man—he seems like an old soldier.

Bern. My friends. I ——

Martin. He falls from fatigue. [Runs to him.]

The. Sit down, father, you are weary.

Bern. And hungry.

The. Hungry? Stop. [Runs into the house.]

Martin. Don't be afraid; you shall refresh yourself here, and then go forward.

The. [Entering with bread and wine.] Here. Now, eat—drink.

Bern. I can accept your help, for here I am in my native place.

Martin. You?

Bern. I know every stone of this valley. Stay—yonder is the Inn of old Latour.

Martin. It was, twenty years ago, but now it is mine.

Bern. There is the forge of honest Gaspard; and beyond is a cottage that once belonged to the prettiest girl in St. Didier.

The. Marie, who followed young Bernard to the wars, and became a vivandiere.

Martin. The place is in ruins; for eighteen years it has been abandoned.

Bern. Abandoned! Marie Bernard never returned then?

Martin. Never.

Bern. She is dead, then—dead.

Martin. Who can he be, Therese?

Bern. After eighteen years' slavery in the mines of Siberia, I escaped; fifty times I tried in vain, and each time submitted to the punishment. But one thought possessed me: that Marie was here. I dragged my feeble limbs across Russia, tortured by hunger and thirst. I fell a hundred times by the wayside, but each time I rose again. I crawl'd on, and at the cabin door, with one hand I hid my cross of honor, while I stretched out the other for charity.

The. 'Tis he! 'Tis Bernard himself!

Bern. And now I come—she is no more.

The. But your child, Bernard, your child lives.

Bern. My child?

Martin. A good and fair girl, Bernard.

Bern. My little child—she did not perish, then! Where, where is she?

Martin. Had you been here a moment ago you would have seen her, but now ——

Bern. But now —— [The music that accompanies Pauvrette is heard in the distance.]

Martin. Do you hear?

Bern. What is that?

Martin. The villagers who accompany Pauvrette, bearing provisions for the winter.

Bern. Pauvrette?

The. Yes, your child.

Bern. They call her Pauvrette. Poor little one! And where do they conduct her?

Martin. Do you forget the usage of our country? To the orphan child of each village is given the care of the sheep in the mountains. She guards them during the winter. Well, Pauvrette came down to-day for her supplies. She remains above there, separated from us—three months

Bern. My child alone—withheld from me—but it shall not be; she shall remain with me; I will follow her at once.

Enter Maurice.

Mau. Come, my friend, you are to guide me to the summit of the mountain.

Martin. I am ready. We have scarcely the time.

Bern. A guide! Sir, you are ascending the mountain. May I follow you?

Mau. Follow us, my good man!

Bern. Your guide will show you the path I need. Don't refuse me, sir.

Mau. As you please. But I fear, wayworn as you seem to be, you will scarcely be able to keep up with us.

Bern. I will keep you in sight. I have traveled a thousand miles to see my wife—I can go one more to find my child.

Mau. Away then! [They ascend the mountain path.]

[End of Act II.]

Act III.—Scene: The summit of the Alps. Rocks and precipices occupy the stage. A rude hut on one side, in front. A bridge formed by a felled tree crosses the chasm, at the back. The snow-clad peaks stretch away in the distance. Night.

The villagers are seen on the r. ascending the mountain—others in the cottage.

Pauv. [In the hut.] Thanks, my friends, thanks; but do not delay here longer—the day is falling; and as you return do not take the road by which we came—it is no longer safe.

All. Farewell, Pauvrette, farewell.

[They go off, ascend the rocks, and cross the bridge—the curate last; Pauvrette kneels before him as he blesses her; he crosses and disappears—she descends to her cottage—returns with her alpenstock, and with a handkerchief tied to its end, she makes signals of adieu; she returns to the hut.]

Pauv. They are gone, and once more I am alone. [The wind is heard.] I don't know why, but I never felt my solitude so deeply as I do now. Perhaps it is the thought of that lady who gave me this ring, and who would have taken me with her. Her name is Louise. [Wind.] How the wind howls! We shall have a storm to night. [Goes out on the rocks.] Yes, the clouds are angry with the mountains. Heaven grant that the good people may regain the village before it comes on! [Thunder.] Hark! that was an avalanche—the first this year. The night falls in; already it is dark in the valley. I can see below me the village; the windows lighted one by one, as the villagers gather round their fires, mothers, fathers, children; but I—am alone! [The echoes repeat the word, "Alone!"] No human voice to answer mine but the echoes of the mountain. [The echoes repeat, "The echoes of the mountain.]

Song.—"Good night." In which the echoes repeat and form a harmony with Pauvrette's voice.

[She carries a lamp from her cottage, and places it before the image of the Virgin, in a niche of rock, l. h. The music then changes to a prayer; she kneels—rises, and returns to the hut. Storm. Thunder and wind.]

Now let me prepare for the night.

Mau. [In the distance.] Hollo—ho!

Pauv. Was not that a cry.

Mau. Hollo—ho!

Pauv. Yes, surely some traveler must be in the mountain.

[Storm—wind. She throws her scarf around her, and hastily ascends the rock. Utters a long wailing cry—listens.]

Mau. Help! help!

Pauv. The voice comes from the Wolf's Pass.

[Descends to her hut. Maurice cries for help. Takes her alpenstock and a coil of rope and reascends the rock. The wind increases—the snow begins to fall. She crosses the bridge and disappears off, l. Bernard appears below on the rocks, l.—he climbs up the path.]

Bern. Courage! I have lost my guides, but just now I thought I heard their cries. How shall I cross these goat-tracks, slippery with ice, encumbered with snow—death beneath me in the precipice, death above me in the avalanche? There is surely a cabin yonder on that ledge of rock—perhaps 'tis hers; but this yawning chasm separates me from its shelter. Oh! this bridge above may lead me there. How can I gain it? [Disappears off, l.]

Pauvrette appears on the bridge leading Maurice.

Pauv. Come gently. Beware; the snow falls, and makes the path icy—to slip is to die. [They cross the bridge.] Yonder is my hut—once there we shall be safe. [They descend and enter the hut.]

Mau. Thanks, my guardian angel! My curiosity had well nigh cost me dearly.

Pauv. Your curiosity?

Mau. My guide warned me that the storm was approaching, and refused to proceed. I knew it was wrong to persist, and, as usual, that is why I did it.

Pauv. Why did you quit the road to venture on the goat-track?

Mau. While admiring the storm, I heard above my head what seemed to be a chorus of angels in the air, all around me. I was upon enchanted ground; I felt that somewhere near there was a fairy castle, with a lovely virgin, spell-bound, and waiting for me to rescue her. I rushed toward the sound; my foot slipped, and I found myself dangling over the precipice, reduced to howl most unromantically for help. So the lovely virgin rescued me, instead of my rescuing the lovely virgin.

Pauv. It was my voice you heard; I was singing to the echoes.

Mau. And this is the fairy castle!

Pauv. Were you alone?

Mau. Yes, quite. As I hung over that precipice, I never felt the sense of loneliness more acutely.

Pauv. As I stretched out my hand to help you, I thought I heard another cry of distress that came from below us.

Mau. Ah! I had forgotten the old soldier.

Pauv. An old soldier! Had you a companion?

Mau. He followed us from the village, but he soon was left behind. No doubt I shall find him in my way back. [Throws open the door of the hut.] I can regain the village by this road, can I not?

Pauv. Yes, and begone quickly; do not lose a moment.

Mau. [Returning.] Before I go, you must allow me to express——

Pauv. Nothing; go.

Mau. You saved my life ——

Pauv. It is still in danger.

Mau. May I not ——

Pauv. No. The night is coming on. The storm has lulled; but I know its way—the next blast will be terrible. Begone; with sun-down you may be safe in the village.

Mau. But ——

Pauv. Go, every moment may bring death with it; go.

Mau. Well, then, adieu; my unknown preserver, adieu.

[As he goes out a crash is heard, accompanied by a gust of wind.]

Pauv. Ah! come back! come back, quick! [Drags him back and shuts to the door.]

Mau. How dark it is. The earth trembles. What fearful sound is that?

Pauv. 'Tis the avalanche.

Mau. The avalanche!

Pauv. There, near us—above our heads. Do you not hear it? It comes! it comes!

[Large blocks of hardened snow and masses of rock fall, rolling into the abyss. Pauvrette falls on her knees.]

Mau. The hut rocks to and fro.

Pauv. Merciful Mother of Heaven, protect his life! for he is not like me, he has those who love him on earth!

[The avalanche begins to fall—the bridge is broken and hurled into the abyss—the paths have been filled with snow—and now an immense sheet rushing down from the r. entirely buries the whole scene to the height of twelve or fifteen feet, swallowing up the cabin and leaving above a clear level sea of snow—the storm passes away—silence and peace return—the figure of the Virgin is unharmed—the light before it still burns.]

Mau. It is past!

Pauv. [Rising.] We are saved!

Mau. For a moment I gave up all hope; now I can return to the village, can I not?

Pauv. Return.

Mau. Certainly.

Pauv. [Throwing open the door at back.] Look!

Mau. Heavens! a wall of snow; we are in a prison—a tomb! for how many hours will this last?

Pauv. Hours! I never counted the hours.

Mau. I may be buried here for days, then?

Pauv. No; for months!

Mau. For months? It is impossible, I must find some means, at least, of communicating with my family in the village.

Pauv. How will you do it? The Power that has let fall the avalanche can alone clear it away. You must wait for three months.

Mau. Wait! for what? what is to be done? To wait is certain death!

Pauv. [Striking a light.] I have lived here for five years.

Mau. Five years! and in each year you have spent three months in this prison?

Pauv. Not always; sometimes it lasts four.

Mau. Here—in this hovel—for four months—and alone!

Pauv. What do you call alone? Am I nobody? [She places the lighted candle on the table.]

Mau. You? that's true—not quite alone. [Pauvrette begins to knit.] My companion will be a young and pretty girl, for you are pretty.

Pauv. Am I? I don't know.

Mau. Ah, no one ever told you so?

Pauv. No one.

Mau. You! you are not annoyed to be thus shut up so long, alone with me?

Pauv. Annoyed? no. I should be happy if I thought you could bear your captivity without regret.

Mau. I mean, you are not afraid?

Pauv. Afraid! what of?

Mau. That is true; you are right. [Aside.] Poor child! she is as pure as the snow above us.

Pauv. But you must be hungry; I will prepare our supper, it is the hour. [Rises and lays the small table with bread and cheese. Exit off, r.]

Mau. [Draws out his watch.] Six o'clock and the post horses were ordered at three. At this moment the heads of our family are assembling in the chateau of the Duchess. to witness my marriage. While she, my poor aunt and Louise, what must be their grief? They will surely believe that I have perished in this storm. Yet it is impossible to apprise them of my safety. It can't be helped! here I must remain for three months, perhaps for four, a sort of subterranean Robinson Crusoe.

Re-enter Pauvrette with a pitcher of milk.

And there's my man Friday. No, a pretty girl is a better companion in solitude than a savage. I think in my edition I have improved on the original.

Pauv. There is milk, cheese and bread—eat.

Mau. Well, the fare is not intoxicating, is it?

Pauv. Do you people in the place below, where you live, do you eat anything else besides these?

Mau. Well, yes, sometimes we do.

Pauv. Ah, then you will think with sorrow of the life you have left.

Mau. No; I shall only regret ——

Pauv. What?

Mau. My family.

Pauv. Ah, you have one, have you?

Mau. Have not you?

Pauv. I have a cross in the village churchyard, on which is my mother's name; but she does not lie there. They say that perhaps my father lives, and may some day return.

Mau. Have you never seen your parents?

Pauv. Never. Yes, in my sleep I see them, and sometimes they speak to me, and smile upon me!

Mau. Poor child!

Pauv. Speak to me of those who love you.

Mau. First, then, there is my dear old aunt, who, though proud and severe to all the world, loves me with all her heart, and perhaps now is weeping for my loss. And then ——

Pauv. Then.

Mau. There is a—another ——

Pauv. Another—your sister?

Mau. Yes, my sister, who loves me—still more.

Pauv. How good it must be to be loved; ain't it? I once had a dog that loved me, but he died. I say, my name's Pauvrette; what's yours?

Mau. Maurice.

Pauv. Maurice, shan't we often speak of those who love you?

Mau. Yes, often. Have you no books here?

Pauv. I can't read; but still I have one, I found it in the bosom of a dead man who had perished in the snow—here it is.

Mau. [Opens it.] The Testament! and you don't know what book this is?

Pauv. No!

Mau. I will teach you how to read in it.

Pauv. To read! oh, will you? give me your hand. [She takes it.] Maurice do you think you could ever love me?

Mau. Love you, Pauvrette?

Pauv. Yes; think that I am your sister, will you? or your aunt; which do you love best?

Mau. Which? well, perhaps my aunt.

Pauv. Then love me like your aunt—not so much, but like that; could you?

Mau. Dear child! yes, I will try to do so.

Pauv. Oh, I shall be so happy! well, now, we must prepare for the night.

Mau. For—the night?

Pauv. Of course! [Taking a truss of straw from r. h., throws it down l.] There, that's my bed; and now I'll make yours. [She takes another truss and throws it down r., at back.] There, now, with a pair of goatskins we shall sleep soundly till morning. [She throws down the goatskins.]

Mau. Ah, I am to—sleep yonder?

Pauv. I'll take that, and you have this, if you would like it better—would you?

Mau. No, no, this will do.

Pauv. Well, good-night, Maurice.

Mau. Good-night, Pauvrette.

Pauv. [Kneeling beside her couch, sings a prayer, and lies down and goes to sleep.] Oh, kind Heaven, send that in my sleep I may see my dear father, and my mother—dear mother my moth —— [Sleeps.]

Mau. She sleeps! and alone there beside me, shut out from all the world—alone—so young, so innocent and so pure; how beautiful in her sleep.

Pauv. [Sleeping.] My father—my father!

Mau. Her father! Poor orphan child sleep on in peace, under the protection of Him whose word came to you, and yet you know it not.

[Bernard and Martin appear on the crag, l. h., near the broken bridge.]

Martin. Her hut is yonder, deep under the snow.

Bern. My child! my child!

Pauv. [Asleep.] My father! dear father!

Mau. For three months alone with her!

Bern. Three months alone, and under the pitiless snow! My child, may the blessing of Heaven watch and guard thee!

[End of Act III.]

Act IV.—Scene: The chateau of Grandval. The stage is occupied by a pavilion, through the arches of which may be seen the gardens and the chateau. Sunset. Louise is seated at a toilette, l. h.; a cheval-glass, and chairs, on which are displayed the appurtenances of a bridal-dress—the Duchess near her. Three liveried servants, r. h.—two lady's maids, c. and h. Music. Enter the intendant of the Duchess.

Intend. Madame, the tenantry and villagers of Grandval are waiting your pleasure.

Duch. Let them approach.

[Music. Enter, at the back, a crowd of peasantry.]

Good people, to-night is a fete at the chateau; for the Count Maurice de Grandval will wed my daughter, Louise de Beaulieu.

Peasants. Vive Count Maurice! Vive Ma'm'selle Louise! Hurrah!

Duch. Let the village be illuminated. There will be music, dances, and a banquet for you, in the park; for this year, each farmer in the estate is rent free.

Men. Hurrah! Long live the Duchess!

Duch. To each girl will be given a thousand francs dowry.

Women. Long live the Duchess!

Duch. Away with you!

All. Hurrah!

[Music. They all go off, joyfully, shouting, and waving their hats.]

Duch. At last, my hopes are realized. Louise, come here. In the approaching ceremony, I hope you will deport yourself like a Beaulieu. Recollect that hundreds of eyes—the noblest in France—will be upon you.

Louise. I would rather have only two eyes on me, and those to be in the head of a man I loved.

Duch. Louise! are you a peasant-girl? What sentiments are these? Do you not love Maurice?

Louise. How can I? He never comes near me; and although we live in the same chateau, I have not seen him twice since he returned home, two months ago.

Duch. Would you have him hanging round you like a rustic, snatching kisses in a corner?

Louise. I shouldn't mind.

Duch. The vulgarity of your nature shocks me. Maurice is too good for you. Kind, handsome, rich, and noble. He is an angel.

Louise. That is why his visits are so few and far between.

Duch. The vulgar blood of your republican father betrays itself.

Enter Michel.

Michel. Pardon, me, Duchess. I have ridden across from my regiment, to hand you this dispatch.

Duch. [Taking the dispatch.] It is from his Majesty. [Opens and reads it.]

Louise. [Aside.] Poor Michel! how pale he looks.

Michel. I—I beg to congratulate Ma'm'selle de Beaulieu on the occasion of her marriage.

Louise. Why have we not seen you since the return of Maurice?

Michel. I came to share your sorrow when we all thought Maurice was dead; but now you will find plenty who will share your joy.

Louise. [Aside.] He loves me still.

Duch. Listen, Louise. [Reads.] "My dear Duchess: I enclose a blank commission of Colonel of the Royal Guards; Mademoiselle Louise will fill it up with the name of her husband, and present it to him as his wedding gift." Signed, "Charles."

Louise. The dear old king!

Michel. That commission I have sought through forty fields of battle; I would have given my right hand for that piece of paper; yet I shall remain a captain, and this boy is made colonel over me.

Duch. You forget he is a count.

Michel. That's true; and I am only a soldier. But God bless him all the same; for he is a noble fellow, although, as you say, he is a count.

Duch. Leave us, Louise. [Goes up.]

Louise. Yes, madam. [Going, returns, and runs to Michel—takes his hand.] You forgive me, do you not? and you will continue to love me? Oh, do! nobody loves me, except you.

Michel. Oh! why did fortune put you out of my reach! If you had only been a housemaid! But I have no luck.

Duch. Louise!

Louise. I'm going. [Aside, as she goes.] Poor fellow! If we had been alone, I believe I should have given him a kiss. [Exit.]

Duch. [Advancing.] Michel, the conduct of Maurice fills me with apprehension and doubt. During all the winter we mourned him as dead. His guide told us that he had surely perished in the mountains, and his absence confirmed our fears. Two months ago, he suddenly appeared at the chateau, and related how his life had been saved by a shepherd or chamois-hunter, in whose hut he had lived through the winter.

Michel. Did you believe his story?

Duch. I confess I doubted it; for, when pressed for the history of his imprisonment, he faltered, grew pale, and contradicted himself.

Michel. There is some mystery in it, which he desired to conceal.

Duch. Since his return, he has been no longer the same being that he was. Now he is pale, abstracted, and seems to devour some passion in secret. His story of the avalanche was a falsehood, invented to excuse his flight with some paramour, of whose love he is justly ashamed.

Michel. But he will discard such a connection when he marries.

Duch. No; for I fear the creature is concealed somewhere in the neighborhood. Maurice, under pretence of hunting, absents himself days together, from the chateau; and my servants, whom I set to watch, have traced him to a cottage in the forest, where he spends the whole day.

Michel. Madam, I can dispel your suspicions. In that cottage lies a poor old soldier, who nearly perished in the same avalanch from which Maurice escaped. It is by the bedside of Bernard that Maurice spends his hours, nursing him through a fever—tending him as if my old comrade had been his father.

Duch. What interest can he have in this wretched invalid? It is a strange taste to leave the boudoir of a beauty for the bedside of a beggar!

Michel. Hush! They are here. Yes, 'tis Bernard himself.

Enter Bernard, leaning on Maurice.

Mau. Duchess, here is an old friend of yours.

Bern. Madam, it is long since we met. Time and fortune have been kind to you.

Duch. You are the soldier who had charge of my Louise.

Bern. After eighteen years of suffering, I returned to my native village; but Heaven willed that I should not find my child—my little Pauvrette.

Duch. Pauvrette, the shepherd girl I saw in St. Didier!

Bern. That same day, even at the moment when my arms were stretched out to embrace her, the avalanche swept between us. I could bear up no longer. Grief, long suffering, and exposure to the snows, laid me on a bed of sickness, where I had died but for my old comrade, Michel.

Michel. But for Maurice, you mean.

Bern. Maurice, my perserver! Why do you turn away from me when I try to thank you? My gratitude seems to wound you.

Mau. [Aside.] Gratitude to me from the father of Pauvrette! Each word he utters stabs me to the heart.

Michel. Bernard, you have scarcely recovered from your fever; you are too weak to travel.

Mau. And yet he insists on leaving Grandval to-day.

Bern. I must seek my child. A month has passed since the snows have melted on the mountains, but on searching for her cabin, the villagers found it empty and deserted. Perhaps she has perished.

Duch. But have no traces been found?

Bern. None, madam. They have sought in every chasm, in every cave of the mountains, but she has disappeard. To-day I expect a letter from the curate of St. Didier, with the last news they have gathered. If they have failed to find her, I will search the world through for my little Marguerite.

Enter Louise.

Louise. I heard Maurice's voice.

Mau. Bernard, here is my—my future bride. The hours I spent beside your couch were stolen from her feet. Plead for me.

Duch. Louise, this is the old solder, who, eighteen years ago, in the retreat from Russia, saved your life.

Louise. Bernard!

Bern. [Starts, trembling.] What voice was that?

Louise. 'Twas mine!

Bern. Marie! Ma-rie! No! it is ——

Duch. This my daughter, sir—Mademoiselle de Beaulieu.

Bern. Your daughter! Pardon me, ma'm'selle, excuse—my fever has left my brain weak, and your voice sounded like one that was dear to me, but has been hushed, long, long ago; and your face, too, has a look of hers—of—of my—poor—poor Marie!

Michel. [Aside.] So it has; it was that same look that knocked the legs from under my heart, and so left me a cripple ever since.

Bern. Let me express, at least to you, the gratitude I feel to my preserver.

Mau. [Aside.] His preserver! and to me he owes the loss of his child.

Duch. Enough! Monsieur Bernard, you will not leave Grandval until after the ceremony, which will take place this evening—and at which we desire your presence.

Mau. [Aside.] He, the father of Pauvrette, at my wedding.

Duch. To-morrow we will aid you in your search—your arm, Maurice. Michel, lead M. Bernard to the chateau. [Music. Exeunt all but Louise.]

Louise. How strangely the presence of that old sold soldier affected me. He seems like some one I have known and loved dearly, and yet I cannot remember him.

Enter servant with a slip of paper.

Servant. There is a poor person at the park gate, Ma'm'selle, who desired me to give you this.

Louise. [Reading.] "Louise de Beaulieu, Chateau de Grandval." Why this is my own writing! Ah, I remember—the poor girl I met on the mountains.

Servant. She seems a beggar; shall I send her away?

Louise. No, no! admit her at once. [Exit servant.] 'Tis Pauvrette—the poor little thing has come—on my wedding day too, to see me.

The servant returns, bringing Pauvrette, who is pale, wayworn, and with wretched clothes. He points to Louise and then goes out.

There is another towards whom I feel as I did just now towards that old soldier. [Sees her.] Pauvrette!

Pauv. Louise! [Leaning against the piller, holds out her hand to Louise, who advances and brings her forward.] Louise! do you not forget me?

Louise. Forget you—why—why should I?

Pauv. I thought that, perhaps, the rich and the great always forgot the poor.

Louise. No, my poor Pauvrette. Come and sit down; and so you have kept your word?

Pauv. Yes, you said, "Perhaps misfortune may come, and if you ever want a friend or shelter come to me." Well, misfortunes did come, and here I am.

Louise. You are pale, your eyes are red, and your cheek is hollow.

Pauv. Yes, I have wept a good deal.

Louise. Why did you not come to me sooner? I would have dried your tears.

Pauv. I feared to trouble you, and besides, I—I—was waiting, hoping, that one—who had—left me, would came back, until I wandered after him by the road he took, sleeping only to dream of him, waking only to swallow my tears, and follow on—on.

Louise. And how long have you wandered thus?

Pauv. I don't know.

Louise. Here you shall rest—give me your hand Pauvrette—where is my ring?

Pauv. Your ring! I—I have it not; it came from you—it was the only thing I had that I loved and prized—so I gave it to him.

Louise. To him! to your betrothed?

Pauv. No—n—no—! I have no—betrothed ——

Louise. To your brother?

Pauv. To one who I know has gone from me forever! and now, if I come to you, it is because I have lost all hope of seeing him again. If you would help me, oh! you must be very generous—you must hold out your hand without asking one why I suffer, and you must pity my tears without asking me why I weep.

Louise. Keep your secret! you are unhappy, that is all that I wish to know.

Pauv. Oh, you are good, and you must believe me when I tell you, and God is my only witness, that if wrong has been done, I—I am not unworthy of your love.

Louise. Kiss me, Pauvrette; henceforth we shall be sisters. Stay! you must not be seen in these poor clothes; they are in rags.

Pauv. Are they?

Louise. One of my dresses will just fit you. [Calls.] Fanchette!

Pauv. What would you do?

Louise. You shall see. [Calls.] Fanchette? Nanine!

Enter two lady's maids.

Take this lady to my room, and replace this disguise she wears with one of my dresses.

Pauv. Louise!

Louise. Hush! do as I tell you. To-night is my wedding, and I rule everybody on this occasion.

Pauv. I will be your servant.

Louise. No, my sister! when I was an infant I had a little foster sister; you shall take her place in my heart.

Pauv. Oh, Heaven has guided me to your feet. [Music. Exit Pauvrette.]

Louise. What a dear little thing—a violet fresh from the woods is not more sweet, she shall attend me to-night at my wedding.

Enter Michel.

Michel. Mademoiselle, I am going, good-bye. The preparations for your wedding are too much for my courage.

Louise. Good-bye, Michel; don't think unkindly of me because you can't marry me.

Michel. Unkindly! oh mademoi—oh! Lou.—oh—selle—ise!

Louise. I am the victim of circumstances! Oh! that Maurice did not love me as mamma says he does. But he does love me, Michel?

Michel. [Aside.] Shall I tell her all? I will.

Louise. I have doubted it lately—you can confirm my doubts. Be candid.

Michel. Louise! Louise! I—I—he—he—he, yes, he loves you! he will love you—he can't help it! [Aside.] I was very near doing the first cowardly action of my life. The enemy is too strong for me, I will retreat. [Aloud.] Good bye, Louise, may you be happy. [Kissing her hands.]

Enter Maurice.

Maur. Michel!

Louise. Ah! [Goes up into garden.]

Michel. I was saying good-bye.

Maur. No; you must remain. This marriage is impossible. Heaven seems to interpose to prevent it; let me confess to you; my heart—my honor is pledged to another; to one whose absence is

one long, enduring reproach, increasing in agony day by day. This marriage will be a double treachery and a double perjury.

Michel. And the Duchess, who has set her heart upon its accomplishment; the Duchess, who has paid your debts, who has already conveyed to you this very estate. Are you not bound by the very benefits you have accepted?

Maur. I would sooner beg from door to door than remain the poor thing I feel myself. Michel, I have deceived, ruined the child of Bernard.

Michel. Pauvrette!

Maur. Hush! yes, Pauvrette, my preserver from the avalanche. The poor, guileless child, entrusted to me by Heaven. Her innocence left her unprotected,

Michel. Now I understand your conduct to Bernard.

Maur. How will he feel when he finds his child, and learns my infamy? Michel, I would rather blow my brains out than meet him then. What can I do?

Michel. Go to the devil; how can I advise you? Here now, let me confess since we are at it. I love your wife, have loved her all along. Now you ask me to advise you to give her up, to throw her into my arms; you want me to act like a contemptible rascal, who—who—for his own ends would—well you know what I mean.

Louise. [Advancing.] Michel, what's the matter?

Michel. [Slowly.] She wants—to know what is the matter?

Maur. [Aside to Michel.] Tell her, Michel, tell her, I cannot find the words. [Exit.]

Michel. [Aside.] He can't find the words, and he leaves me to—

Louise. How pale Maurice looks; what has happened?

Michel. Ma'm'selle. [Aside.] My heart beats with joy, and—and fear. [Aloud.] Ma'm'selle, I have been commissioned—to inform you [Aside.] How shall I convey the idea. The fact is, the story requires some delicacy of handling to—[Aloud.] Ma'm'selle, I—I cannot find words either. [Exit.]

Louise. Are they mad? what can they mean?

Re-enter Pauvrette, dressed.

Pauv. Louise!

Louise. Pauvrette! can it be possible—oh, what a change—how pretty she looks. Had you come a moment sooner you would have seen my husband that is to be.

Pauv. May you be happy as you deserve.

Louise. Sit down there! see here are all my bridal ornaments; this is my crown—let me see how it looks. [Places it on the head of Pauvrette.] Oh, what a sweet bride you would make. This necklace was a bridal present from Louis XIV to some one of the Beaulieus. Is it not beautiful!

Pauv. How you do call these drops of water?

Louise. Diamonds! Look how they shine in these earrings. But I can only wear one of them; for—do you see?—I have lost a little

bit of my ear; it happened before I can remember. But you see, I wear my hair over it, so Maurice has never noticed ——

Pauv. Maurice!

Louise. Yes, that is my husband's name.

Pauv. Ah! his name too is Maurice!

Louise. Yes; is it not a pretty name? Here is his portrait, set in pearls; let me clasp it upon your arm—so.

Pauv. Your husband! let me see him whom your heart has chosen. [Looks at the bracelet and rises—utters an exclamation and falls back in the chair.] Ah!

Louise. Pauvrette!

Pauv. This—portrait ——

Louise. 'Tis he!

Pauv. Your husband—Maurice?

Louise. I am not surprised at your admiration. Look! [Raising Pauvrette's arm.] He is handsome—is he not? How noble and truthful are those eyes!

Pauv. Noble and truthful!

Louise. Incapable of deceit or treachery.

Pauv. You would believe his words—his vows—would you?

Louise. Believe him! Maurice is the soul of honor.

Pauv. [Aside.] She loves him—and for her he deserted me.

Louise. But see the day is falling—in a few moments it will be dark, and I must prepare for the ceremony. Pauvrette, take the bridal crown from your brow and place it upon mine. [Sits. Pauvrette trembling, takes off the crown.]

Pauv. [Aside.] Even as he took his love from me, to give to her—so I pass this bridal crown. [Raises it towards the head of Louise, but lets it fall.] No, no, I cannot!

Louise. [Rising.] Pauvrette!

Pauv. Let me go—let me leave this place! [She takes off the necklace and bracelet.]

Louise. Why, what for?

Pauv. Why, because—[Stops, and then aside] No, she loves him—she has had pity on me—has dried my tears, why should I make her's flow. [Aloud.] I must leave you because I cannot bear the sight of your happiness—because if I remained I must deceive you, or speak out and break your heart—I will do neither—so I go.

Enter Bernard.

Louise. Oh, sir, do not let her go. [Bernard takes Pauvrette's hand and brings her back.]

Bern. Mademoiselle!

Pauv. No, let me go, I pray you.

Louise. Poor girl! she would leave me because she is unhappy. Make her remain here. Do not release her until I can fetch mamma. Will you promise me?

Bern. She shall not stir.

Louise. I rely on your word. [Exit.]

Pauv. She is gone, now I can escape.

Bern. Stay, mademoiselle, my word is passed for your safe keeping.

Pauv. If you are the friend of Louise, you will aid me to leave this place, where my presence will bring misery and ruin upon her—and sorrow to Maurice.

Bern. Sorrow to Maurice?

Pauv. Now will you let me go?

Enter servant with a letter. Pauvrette goes up.

Servant. Here is a letter sir, for you, from the village of St. Didier.

Pauv. [Returning.] St. Didier!

Bern. St. Didier! give it to me. [Exit servant.] This letter contains all my hope, all my life. [Tears it open.] And yet not to know how to read! Where is Maurice, or Michel! stay, perhaps this lady—madamoiselle, do you know how to read?

Pauv. Do I? Yes—now, alas! I do.

Bern. Then read; read quickly. It comes from the curate of St. Didier—does it not?

Pauv. Yes, the curate of St. Didier.

Bern. Well, read, read.

Pauv. [Reads.] "Sir—We have at last discovered a trace of the girl in whose fate you take so deep an interest."

Bern. She lives! she lives, then! Go on.

Pauv. [Reads.] "Ruined and abandoned by her seducer, she left her hut in the mountains ——" [Aside.] But this—it is of me he speaks.

Bern. Abandoned!

Pauv. [Reads.] "She has departed, no one knows where; not daring to show her face amongst us in the village."

Bern. May God have mercy upon her and forgive her! She was alone in the world—no father to guard her from evil, no mother to shield her from sorrow!

Pauv. But you—who are you to whom they write these things—why do you weep for her loss?

Bern. Why, because this poor girl—ruined, dishonored, lost—she was my child.

Pauv. Your—your child! [Stands transfixed.)

Bern. She was the only tie that bound me to life; let Heaven call me to my last home now—I am ready.

Pauv. [Aside.] My father! my father! and I dare not tell him I am his child.

Bern. I shall never see her—never see my little one—it would add to her sorrow and to her shame; I would be a living reproach beside her; she would fly from me. No! let me crawl aside and die, so that she may never know the tears I shed—never know that the old soldier died of a broken heart! [Exit, r. h.]

Pauv. [With a low cry of anguish.] Oh, Maurice! Maurice! [Falls into the chair by the toilette, l. h. Night has gradually fallen upon the scene.]

Enter Maurice, l. h.

Mau. I can maintain this falsehood no longer. To appeal to the Duchess would be useless, and Michel refuses to speak to Louise. I will do it. Ah! she is there. [Aloud.] Louise!

Pauv. [Starting.] That voice!

Mau. Dear Louise!

Pauv. Ah! [Falls, with her face upon the table.]

Mau. Listen to me, for I have to claim your pity and your pardon. Louise, I have merited your reproaches, but I will not deserve your contempt. The love which to-night I must swear to you, is pledged to another—to one whom I have robbed and abandoned like a coward. Louise, be generous; save this poor girl, and bid me go and lift up her face and wipe from her brow the blush of shame I left there.

Pauv. [Aside.] Maurice!

Mau. She has no friends; no family to soothe her grief; no riches to hide her error; no home but my love; no hope but my promise. Louise, you will give me back my word, and release me from this marriage. Speak to me, Louise; you weep—Louise!

Enter Louise, r. h., followed by servants, bearing lights, the Duchess and Bernard.

Louise. Maurice!

[Maurice starts back, looks at Louise, and then at the figure of Pauvrette.]

Mau. You—you there! To whom, then, have I spoken?

Louise. That—ah? do you not know?—that is Pauvrette.

Mau. Pauvrette!

Bern. Pauvrette! [Pauvrette turns, and falls at the feet of Bernard.]

[End of Act IV.]

Act V.—Scene: The same as in Act IV.

The Duchess discovered, r. h. Maurice l. h. Music in the distance. Enter the intendent.

Intend. Madam, the guests continue to arrive at the chateau. Your grace's absence creates surprise.

Duch. Is the chapel ready for the ceremony?

Intend. All is prepared, madam. The priests are robing themselves in the oratory.

Dutch. I will be there. [Exit intendant.] You hear, Maurice. Must I appear amongst our family, and publish this scandal? must I announce that Count Maurice de Grandval refuses to wed Louise de Beaulieu, because he has not quite concluded his amour with a beggar girl?

Mau. No! say that you have found that Maurice de Grandval was

a villain, to whose honor and to whose heart you would not confide the happiness of your child!

Duch. Your paramour has had the insolence to follow you to this house—to intrude herself upon your bride. Louise is as yet ignorant of this degradation; must I sully her innocent mind with a relation of such infamies?

Mau. Whatever the infamy, it is mine alone. Let me suffer the degradation and the blame. Pauvrette is innocent.

Duch. My nephew, it is enough. [Rises.] I will retire from this estate, which is now yours. I will take my daughter away to some obscurity, where this scandal will not blight her name.

Mau. Duchess ——

Duch. Hear me, Maurice; I am too proud to allow my daughter to become the rival of this girl, and to struggle with her for your love. I hoped that your better feelings would have rescued us from such an alternative, but it seems that we must yield—be it so—my affection for you, my dear nephew, remains, and will remain always the same, deep, constant, unbroken, although mingled with sorrow; but let that pass. Your debts have been paid; and at my death, which my broken hopes will hasten, I divide my fortune equally between you and Louise.

Mau. I cannot accept.

Duch. Do not fear; we shall never intrude upon your life. We part to-night and forever; henceforth, not a word, or a look of reproach, shall meet you from either of us.

Mau. Oh! do not break my heart—my more than mother!

Enter Michel.

Michel. They are going, Maurice. Bernard and Pauvrette are leaving the chateau. They will not listen to me.

Mau. What did Bernard say?

Michel. The old man drew his child to his breast, and said: "Michel, why does Count Maurice send after me? I owe him nothing—I owed him my life; but he has blighted the life of my child. He is paid!"

Mau. And Pauvrette—did she not speak?

Michel. Yes.

Duch. Reproaches, of course.

Michel. Yes, madam; she uttered the bitterest reproaches I ever heard. She said: "Take my last kiss to Maurice. I shall love him ever; and if he would atone for the past, let him keep to Louise the vows he made to me!"

Mau. Pauvrette! Pauvrette!" [Buries his face in his hands.]

Michel. You blush, madam. [He takes off his hat.] You feel it, do you?

Duch. Why do you take off your hat, sir?

Michel. I always do on being introduced to a stranger; and I never saw your heart before.

Duch. Follow them, Michel; take this sum of money: they are poor; it will preserve them from want. [Offers a pocket-book.]

Michel. [Rejecting it.] No, Duchess; Maurice has injured them, but that is no reason why we should insult their sorrow. I slipped into the havresac of Bernard a purse containing my savings; he can accept from an old comrade what from you he would reject.

Enter Louise.

Louise. What is all this mystery about? I have been seeking Pauvrette everywhere.

Michel. Pauvrette has gone home, Louise, never to return! She did not think that—everything considered—she was a fit companion for you.

Louise. How strangely you all look; you are concealing some secret from me; Maurice, you will tell me, will you not? You will bring Pauvrette back. What is her fault to me!

Mau. Louise, do not ask me; I cannot.

Louise. [Taking his hand.] Why do you all turn against this poor girl? Maurice, let me plead for her—give her to me! I ask her of you as a wedding gift—you will not deny—[Looks at his hands.] Ah! [Aside.] this ring? my gift to Pauvrette upon the hand of Maurice!

Mau. Louise! you are pale! you tremble! [Advances to embrace her. She shrinks from him.]

Louise. No! leave me! I am well! [Aside.] And she said that she had given it to her lover, who had left her, deserted her! and that lover—'twas Maurice!

Re-enter the Intendant.

Intend. [Madam, the young girl and her companion, before leaving the chateau, desire to see you.

Duch. Bernard and Pauvrette! [Goes up.]

Michel. He has found my purse. I am in for it.

Louise. Pauvrette with Bernard! Why are they together? Ah! now I shall hear the truth. [Exit l. h. door.]

Enter Bernard and Pauvrette.

Duch. Sir, we grieve for your misfortune, and you may rely at all times upon our aid.

Pauv. [Aside.] My father, remember your promise.

Bern. My child, I will not forget that our injuries place us superior to all here. We come to utter no reproaches, no complaints. Madam, I know the distance that exists between your rank and mine, and it is not the misery of my child that can efface it.

Duch. With what motive, then, do you come?

Bern. You gave your servants the order to drive my child from your door; you had the right to do so; but you had not the right to brand her with your charity—for she neither gave nor sold herself.

Michel. [Aside.] I knew it.

Duch. That money, sir, did not come from me.

Bern. We cannot accept it, Count de Grandval, under whatever subterfuge it is offered, and from whatever hand it comes, we reject it.

Pauv. Maurice! This money, you know it was unkind, cruel, to offer it. [Turning to the Duchess.] You would cast me forth, madam, as a wretch; oh, forgive me, if I have caused you grief. Indeed, I did not mean that anybody should share my misery; do not despise me. Oh, my heart is on its knees at your feet—give me a look of pity—oh, Maurice, tell her that I was not guilty, either of my own ruin, or of the sorrow I brought to this house. Tell her that when you first met me, a poor, ignorant child of the mountains, living alone, far from your world, I was not dazzled by your rank or your fortune. Is this true?

Mau. It is as true as the love I bear you still!

Pauv. You see, madam, that I did not know what fortune was; and when I gave him one-half of my roof to shield him from the avalanche—when I shared with him my provision of black bread, and held my cup of milk to his lips, at that time, madam, it was I who was rich, and he who was poor.

Duch. Oh, Maurice, how noble a heart have you laid waste!

Michel. [Taking off his hat.] Heart again!

Pauv. No! do not blame him, madam. In the misery that falls upon me, I see only the will of Heaven. I submit to it without a murmur; but I do not choose to take from hence the contempt of anybody. Adieu, Maurice. I see you for the last time.

Mau. Pauvrette!

Pauv. For the last time. Teach Louise not to despise me; and may God bestow upon her the happiness He has taken from me.

Duchess. Farewell, Pauvrette, [offers her hand to Pauvrette, who, with a light cry of gratitude, falls at her feet and kisses them,] farewell, poor child, may these tears that fall upon your brow attest that I believe you innocent.

Pauv. [Rising.] Father—father—take me away now—my heart is breaking.

Enter Louise.

Louise. Stay!

All. Louise!

Louise. I have overheard this secret, and I have learned the contemptible part you would all assign me.

Duch. Louise!

Louise. My mother, do you think me so base, so vile, as to buy the hand of Maurice with your fortune, and to build up my happiness with the ruins of Pauvrette's broken heart?

Michel. Bravo!

Duch. What is this?

Michel. It is the blood of the republican officer, your husband, forcing its way through your armorial bearings.

Duch. Do you refuse to attend Maurice to the altar?

Louise. I would as soon attend the pillory, and lose my right ear, as I have already lost my left.

Mau. Louise! [Embraces her with delight and gratitude.]

Bern. [Starting.] What does she say?

Michel. Louise! [Advancing.]

Duch. It is nothing—merely the result of some accident, I presume, which occurred during her infancy.

Bern. Merciful Providence! Do my senses wrong me? Do they wander still?

Mau. What do you mean?

Bern. I mean that on our retreat from Moscow, a bullet which struck my wife Marie in the neck, also wounded my child—my little one—and would leave a mark such as that.

Duch. Your child!—impossible! I took Louise from the arms of your dying wife.

Michel. When I returned to the hut, I found an infant alone there. It was wrapped in the remnant of our regimental colors. That infant I carried to Switzerland, deposited in care of the curate of St. Didier, and that child was Pauvrette!

Bern. Pauvrettte!—come to me!—Come! [Leading Pauvrette to the Duchess.] Madam, eighteen years ago you deserted your husband and your infant child; when you returned to find it, you came not as the mother, to embrace her offspring, but as the Duchess, to find an heir. You could not recognize your own flesh and blood. Heaven, in its wisdom, has decreed that you should remain in ignorance all your life, until now—now; when, for the first time, your heart awoke, abjured its pride, and tears of holy sympathy and pride fell from your eyes. Look upon this creature, whose life has been one long suffering, from poverty, misery, and want. She is the heiress of Beaulieu! Look upon this girl, whom you were driving like an outcast from your door, branded, degraded, and broken-hearted! She is your own child!

Duch. [Falling at the feet of Pauvrette.] My child!

Bern. Stay, madam! Pauvrette, you see that woman?

Pauv. My mother?

Bern. No! she was only your father's wife—who gave you birth—that's all! He loved her, Pauvrette, as you love Maurice! She deserted him! she broke his noble heart!—and all that you have suffered—all—is her doing!

Pauv. [Going to the Duchess, and lifting her face.] Mother! do you know me now? [The Duchess embraces her.]

Mau. Pauvrette is mine—mine, after all! Louise, congratulate me!—I shan't marry you, after all—that is—no, I mean—congratulate yourself! What a scoundrel you narrowly escaped in me! Pauvrette!—[Embraces her.]

Bern. [Embracing Louise.] And my heart did not deceive me, when your eyes first met mine, and the brave spirit of Marie looked out of them into my heart. Marguerite, are you ashamed to have a poor old soldier for a father?

Michel. I'll go back to my barracks—perhaps I'm in the way of this little family party.

Louise. Stay, Michel; you said that you would give your right hand for this commission of colonel, which the king has given me for my husband?

Michel. I would!

Louise. You would?—I' ll take it—give it to me! The poor daughter of Bernard will bring you, as her dowry, the rank and pay of colonel in the Guards.

Michel. Marguerite! [Embracing her.] My wife, my —— Bernard, do you hear?—She takes me!

Bern. And she could not take a nobler or more honest man!

Michel. I can't control my joy. Long live the Emperor!—oh! Lord! I forgot!—no—long live the king!

Shouts outside. Music. Enter the Intendant.

Intend. Madam, the guests are in the hall; the chapel is lighted.

Mau. A double marriage will take place there; and, instead of one daughter, Duchess, you will now have two.

Intend. The peasantry have prepared a fete, but the emblems and names have been changed, by order of Ma'm'selle Louise.

Duch. Come, Louise.

Mau. No—not Louise!—let me never forget that name by which I first knew her, and by which my heart will always call her. Come my wife—come Pauvrette!

Shouts outside. Enter a crowd of peasants. The gardens become suddenly illuminated, and a device, with the name of Pauvrette, forms a triumphal arch in the midst.

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110 Frank E. Aiken, a witness called on behalf of the plaintiff, being duly sworn, was examined in chief by Mr. Clarkson, and testified as follows:

Mr. Aiken:

Q. Did you see a subpœna?

Ans. No, sir; I didn't.

Q. I asked you to bring me some books of the theatre for examination, Wood's Museum, so as to find out what plays were played on certain nights.

By Mr. Bates:

Were you manager of Wood's Museum in this city in 1865 and 1866?

Ans. I was in 1866 and 1867, not in 1865.

Q. Were you performing in that theatre in 1865?

Ans. I was.

Q. You were the leading male actor?

Ans. Yes, sir.

Q. I find that the advertisement in the Chicago Tribune, Mr. Aiken, announces the fact under the head of "Wood's Museum," October 19 and 20, and 21, twice; also on January 4, 1866, March 17, twice; Saturday and March 23, once; and those days, in 1865 and 1866, the advertising of the Chicago Tribune announces that fact, that Mr. Bourcicault's great drama, in three acts, of the "Colleen Bawn" will be played.

111 Ans. That is before my stage management.

Q. Also January 4, and at other times following, and that that play, would be produced on those days. Was that play produced?

Ans. They may have been, but I can't swear to it, because I have not got the dates here, neither have we books at the Museum to prove it.

Q. Did you take part in the play of the "Colleen Bawn?"

Ans. I did not, when it was first produced; afterwards I did not.

Q. Did you, in 1865? were you in the Museum in 1864?

Ans. I have been there since it has been under Col. Wood's management.

Q. In 1865 and 1866 there were 4 representations?

Ans. Mr. Bradley can tell you when the piece was first produced. I was in it the next time when it was produced. I was laid up at its first production.

Q. It was only produced in October, 1865, and January and March, 1866?

Ans. The first representations, I was not in it.

By the Court: Then if October, 1865, was the first representations, you were in it?

112 Ans. Yes, sir; if they were, I say at that time. I don't think they were the first representations.

Q. You were connected with the Museum at that time?

Ans. Yes, sir; but I had fallen from a tree, and was laid up at that time; I can't tell particularly.

Q. I will ask you this question—the play that was produced there at that time, in October, 1865, and January, 1866, was the play known as Bourcicault's play of the Colleen Bawn?

Ans. I can't swear to it.

Q. Having no personal knowledge?

Ans. No, sir.

Q. Have you no knowledge, except what you personally know?

Ans. I know when that play was produced. I played in it as Bourcicault's play.

Q. Did you know any other play of the "Colleen Bawn" than Bourcicault's?

Ans. No, sir.

Q. There is no other play?

Ans. No, sir. I have got a very nice published book of it.

Q. Then, if those plays were announced in the paper as

113 being played October 19th, 20, 21, &c., announced in the papers as Bourcicault's drama of the Colleen Bawn, have you any doubt that they were his plays?

Ans. It was more than likely that it was played. The Museum was under Mr. Bradley's management at that time.

Q. I ask you whether you recollect, in May 7, 8, 9, twice Wednesday, 10, 11, 12, Saturday twice, that is the announcement in the papers of the production of the Octoroon in Wood's Museum, was that Bourcicault's play of the Octoroon?

Ans. Well, I didn't take part in it.

Q. That is not the question.

Ans. Then I can't tell you. I wasn't the manager at that time, when the Octoroon was produced. The only piece of Bourcicault's, produced under my management, was Pauvrette, which I called the "Avalanche," and I took no part in the Octoroon, and I don't remember of having seen it played there.

Q. If the newspapers, the Chicago Tribune, on those days, advertised the fact that that play would be produced on those nights and days, have you any doubt that it was done?

Ans. Well, I wouldn't like to doubt the newspaper, nor
114 swear to its veracity.

Q. Don't you usually produce the piece advertised to be produced?

Ans. Sometimes we do, and sometimes we do not.

Q. Sometimes there may be, of course, unforseen circumstances, but generally, if you advertised the fact beforehand that such a play was to be produced, you usually produced it?

Ans. I should imagine it was produced at that time, of course.

Q. You didn't take part in these plays?

Ans. No, sir; not in the Octoroon.

Q. Mr. Bradley was manager then?

Ans. Yes, sir.

Q. Do you know what plays were being played at McVicker's theatre at the time they played the Octoroon at the Museum, in May? Do you recollect McKean Buchanan being at McNicker's?

Ans. Yes, sir.

Q. What was the play?

Ans. The Octoroon at one time. I don't say it was at that time. I know it was playing at both houses at that time.

Q. You were not manager?

Ans. No, sir.

115 Q. You were manager, however, in Nov., 1866?

Ans. Yes, sir.

Q. Now, I find that the paper announced that on the 5, 6, 7, 8, 9, 10, twice Saturday, 12, 13, 14, twice Wednesday, 15, in November, twelve times in that month, the play of the Avalanche, or "Under the Snow," was produced.

Ans. Yes, sir.

Q. That was under your management?

A. Yes, sir.

Q. Was that Bourcicault play of Pauvrette?

Ans. Well, it was the play of Pauvrette; whether it was Bourcicault's play or not, I can't tell you.

Q. It was known as Bourcicault's?

Ans. Yes, sir; although I didn't announce it as such.

Q. How did you produce that piece?

Ans. We produced it very well, indeed.

Q. I don't mean that. I have no doubt you did.

Ans. It drew a great deal of money. I would like to get another one as good for next week.

Q. Nobody has any doubt about that. I am asking you by what means you were enabled to produce it?

116 Ans. I bought a book for 15 cents, and I instructed the other persons of the company to buy books at 15 cents, of my friend McNally.

Q. You have no means of knowing, yourself, personally, how the Octoroon was produced? You didn't produce it?

Ans. No, sir; not as a manager.

Q. The Colleen Bawn, do you know yourself, personally, by what means that was produced?

Ans. I had a written part given to me, anything more I don't know. I can't tell you.

Q. You were not the manager, and didn't get it up?

Ans. No, sir.

Q. Do you know that at the time the "Colleen Bawn" was produced at the Museum, in October and January, 1865 and 1866, the Colleen Bawn was underlined by McKean Buchanan, at McVicker's?

Ans. No, sir; I do not.

Q. You say the pieces were both running at the Museum and McVicker's at the same time. Do you recollect it had been underlined, that is announced, to be played, not played, but announced to be played, at McVicker's, before you produced it in the Museum?

Ans. The Octoroon?

Q. Yes.

117 Ans. No, sir; I don't remember that he did open in the Octoroon. I do that he opened as a tragedian, and he made a failure, and they put in some other play to fill out the week. He opened pretty bad.

Q. You don't know that the play was underlined?

Ans. I don't know the facts of the case.

Q. And you were pretty well satisfied that you could do it better at your theatre than he could?

Ans. We could not do it any worse.

Q. Wasn't the Octoroon underlined at McVicker's theatre?

Ans. We have a stock theatre, and we generally know what we are going to do. In star theatres, if a man comes and makes a failure they put on Box and Cox.

Cross-examination.

By Mr. Bates:

Q. I understand you to say that this play of Pauvrette has been published and circulated all over the country, at 15 cents a copy?

Ans. I presume it is. You can buy it at almost any book store.

Q. How long have you been upon the stage?

Ans. Since 1851.

118 Q. How long since you first saw a copy of the Pauvrette?

Ans. That I can't say. I don't remember.

Q. About how long?

Ans. O, well, I should think the first I saw was in Boston, in 1859. I won't be sure of that, though; but I saw it while I was there. I was there some 4 years ago. I think I saw it there the first year.

Q. In the duties of your profession, you have examined the various collections of plays at the book stores, in various parts of the country, sufficiently to know that it is bought and sold all over the country?

Ans. Yes, sir.

Q. And you played it from a copy that was purchased at 15 cents?

Ans. Yes, sir.

By Mr. Clarkson. That is all admitted.

Q. Have you ever seen a copy printed, a copy of Octoroon? If so, when and where?

Ans. Yes, sir. I saw one last week, at McNally's book store.

Q. Do you know whether these printed copies are for sale at the book stores here and in New York?

119 Ans. I don't know. He came to me and told me he had a pile of them, and had been selling them at a low price, and he had only that one left, and I could have it for $5. I told him I didn't want it.

Q. As to the Colleen Bawn, do you know whether that has been published?

Ans. Yes, sir. I have got a copy of it at the Museum. It was bought during Mr. Bradley's management.

Q. Have you ever seen the Colleen Bawn after that?

Ans. No, sir.

Q. I want you to state whether you have ever seen, or have personal knowledge, that the Pauvrette and this play, or the Colleen Bawn, were before played in the country theatres all over the country?

(Objected to.)

Q. What do you know about the performance of the Octoroon in various part of the country?

Ans. Well, I know the pieces have been played all over the country, and have been played by travelling companies. Of course, I don't know whether they payed for them or not, but I don't suppose they did.

Q. They have been performed all over the country?

120 Ans. Yes, sir.

Q. By travelling theatrical companies?

Ans. Yes, sir; in small country villages, where, if they get enough to pay for their expenses, they do very well.

Q. The Colleen Bawn; how about that?

Ans. That is another piece that has been played all over the country; I have had bills from actors who wanted engagements, to show me that they had been playing those pieces—The Colleen Bawn and the Octoroon.

Q. How is it about Pauvrette; or Under the Snow? Is that played everywhere?

Ans. Yes, sir; it has been played under the title of Pauvrette.

Q. Then, whenever you have put upon the stage either of those pieces, you have done so from the printed copy which you purchased?

Ans. No, sir; the only one which I have done in this case is Pauvrette.

Q. Do you know Mr. Bourcicault?

Ans. Yes, sir.

Q. Do you know when he left this country?

Ans. No; I don't remember just when it was, he has left the country; you mean the last time, I presume?

Q. Yes.

Ans. Just at the breaking out of the war.

121 Q. Has he ever been back here since?

Ans. Not to my knowledge.

Q. Do you know anything about his living here from 1853 or 1854, down to 1860? I mean do you know of his being in this country personally, anywhere?

Ans. Yes, sir; I know he was in this country; the first time I met him was in Charleston, S. C.

Q. Did he go to England subsequently to that time, to remain permanently?

Ans. I don't know; he may have.

Q. What was he doing at Charleston?

Ans. He came there to play a star engagement with his wife.

Q. He was acting himself, and with his wife?

Ans. Yes, sir.

Q. Did you ever meet him in any part of the country where he was playing?

Ans. Yes, sir; in Boston and New York.

Re-direct examination.

By Mr. Clarkson:

Q. (Handing witness a document.) Look at that, and state to the jury what that is.

Ans. It is a catalogue of plays, dramatic works for sale by McNally & Co.

Q. Published by whom? whose plays—I don't mean the

122 authors?

Ans. Cumberland's, French's, Lacy's, Webster's, old and scarce plays.

Q. Lacy's plays are English, are they not? got up in England?

A. Yes, sir.

Q. How is it about Cumberland's?

Ans. It is an English edition.

Q. French's?

Ans. That is an American edition.

Q. When you want to find a published play, you find it in that book, don't you?

Ans. Yes, sir, generally; not all of the new plays.

Q. Don't they issue editions of that constantly, with the new plays in?

Ans. No, sir; not that I am aware of.

Q. Look at that, and state whether you find Pauvrette published in that catalogue.

By Mr. Bates. We will admit it if it is not in there.

Ans. Yes, sir; it is here.

Q. Look and see if the Octoroon, or the Colleen Bawn, is here, in any part of that book—anywhere.

Ans. I don't see the Octoroon in French's; nor the Colleen Bawn in French's. Do you wish me to look this book all through to find this?

123 Q. Did I understand you to say that you could buy a printed edition or copy of the Colleen Bawn, or the Octoroon as you can buy Pauvrette, for from 15 cents to 25 cents?

Ans. I can't tell the valuation which is set on it. The Octoroon was offered for $5; and the reason was, because there was no more of them at the time. It was the same with Pauvrette; should the edition run out, and no more be printed, they would be worth from $5 to $10 a copy. It is the same way with the old farces; the one that I mentioned, Box and Cox, the edition of that has run out.

Q. Was this copy of the Colleen Bawn, or the Octoroon, that you saw in print, an edition published by Bouricault?

Ans. I don't know who it was published by; it was an English copy.

Q. Did you ever see an American copy of it?

Ans. I don't know that I ever did; no, sir; I never did see any American printed copy.

Q. Did you ever see an American printed copy of the Colleen Bawn?

Ans. I never did.

124 Q. Were not those books that you saw old English books that originally came from England to this country, and surreptitiously sold in this country?

Ans. Not that I know of.

Q. Don't you know that the Colleen Bawn and the Octoroon to-day cannot be bought in McNally's as you buy other plays?

Ans. No, sir; I don't know it; I know he offered me one copy of it, because that was all he had left.

Q. You paid $5 for that?

Ans. No, sir; I didn't buy it at all; I didn't think it worth that much to me.

Q. That was the price?

Ans. Yes, sir.

Q. What is the price of these published books?

Ans. 15 cents; but that is not the price of that; it is his value.

Q. Suppose to-day that you want to buy a printed copy of the Colleen Bawn, or of the Octoroon, did you say that you could go to McNally's and find it on his shelves, to purchase?

Ans. No, sir; I don't think I could.

Q. Could you at Walsh's?

125 Ans. I don't think that I could.

Q. You would go to McNally's and say, Mac., I would like to get a copy of the Colleen Bawn?

Ans. Yes, sir; I do something of that kind every day.

Q. And ask that the copy might be furnished you?

Ans. Yes, sir.

Q. What would you pay for it?

Ans. I havn't the slightest idea.

Q. Do you know how he gets it?

A. No, sir.

Q. Don't you know that these books, if got at all, are got of the book-sellers somewhere in New York, on the sly?

Ans. I don't know it.

Q. Did you say that you have seen a printed copy of the Colleen Bawn, or Octoroon, published, purporting to be a copy issued by Bourcicault, or by his authority, anywhere?

A. I don't think I have.

Q. Has any copy of the Colleen Bawn, or Octoroon, had upon it a copyright, such as you have seen upon Pauvrette?

Ans. I didn't examine close enough to see.

Q. You have never seen an American copy of either?

126 Ans. No, sir.

Q. Is the copy of Pauvrette that you have produced and played from, one like this attached to this deposition?

Ans. Yes, sir; it is the same as this.

Q. That is an authorized edition of Pauvrette?

Ans. If you will allow me to say one thing, I buy authorized editions every week of plays which they publish at Manchester, for which I pay from $10 to $15, and $25; there is one that they will not sell in London, which they sell in Manchester. I buy them from New York, and have to pay a big value for them, of course. The value of the play amounts to nothing, so far as it is concerned. They may sell for 5 to 10 or 15 cents.

Counsel for the plaintiff here offers in evidence certificate of the clerk, Mr. Betts, of the southern district of New York, dated September 2, 1858, certifying that on that day Dion Bourcicault, of the said district, deposited in that office the title page of the book entitled Pauvrette, and which said certificate is in the words and figures following, to wit:

127 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that on the second day of September, anno Domini 1858, Dion Bourcicault, of the said district, hath deposited in this office the title of a book or dramatic composition the title of which is in the words following, to wit: Bourcicault's Dramatic Works, forming the repertoire of Miss Agnes Robertson. No. VII. Pauvrette: A drama in three acts; by Dion Bourcicault, author of London Assurance, Old Heads and Young Hearts, The Irish Heiress, Used Up, The Corsican Brothers, Love and Money, The Willow Copse, The Life of an Actress, The Phantom, Andy Blake, The Chamelion, Victor and Hortense, Genevieve, The Young Actress, Lewis the Eleventh, The Knights of Arva, Faust and
128 Marguerite, Janet Pride, George D'Arville, The Poor of New York, Belphegor, Napoleon's Old Guard, Love in a Maze, Alma Mater, A Lover by Proxy, Don Cesar de Bazan, The Invisible Husband, Sextus the Fifth, The Prima Donna, Bluebelle, The Cat Changed into a Woman, The Fox Hunt, Jessie Brown, or the Relief of Lucknow, &c., &c., &c., the right whereof he claims as author and proprietor, in conformity with an act of Congress entitled "An act to amend the several acts respecting copyrights."

[SEAL.] GEO. F. BETTS,
Clerk of the Southern District of New York.

[5-cent U. S. stamp, cancelled.]

Work deposited October 6th, 1858.

129 Objected to as not legal prima facia evidence to establish the facts; second, because there is no sufficient legal evidence that this Mr. Betts was the clerk of the court; third, in addition to the seal of the court it requires the certificates of the judge making the court.

Council for the plaintiff also offers in evidence certificate of the same court that the title of the book or dramatic composition entitled the Octoroon, or Life in Louisiana, was deposited with him the 12th day of Dec., 1859, and which said certificate is in the words and figures following, to wit:

130 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that on the twelfth day of December, anno Domini 1859, Dion Bourcicault, of the said district, hath deposited in this office the title of a book or dramatic composition, the title of which is in the words following, to wit: The Standard Drama, the acting edition. No. CCXXVI. The Octaroon, or Life in Louisiana, a play in five acts; to which are added a description of the costume, cast of the characters, entrances and exits, relative position of the performers on the stage, and the whole of the stage business. By Dion Bourcicalt. The right whereof he claims as author and proprie-

tor, in conformity with an act of Congress entitled "An act to
131 amend the several acts respecting copyrights."

[SEAL.] GEO. F. BETTS,
Clerk of the Southern District of New York.

[5-ct. U. S. rev. stamp, cancelled.]

132 Also, the certificate of the same clerk in the same court that on the 23d day of March, 1860, Dion Bourcicault deposited in that office the title page of a book or dramatic composition entitled The Colleen Bawn, or The Brides of Garryowen, and which said certificate is in the words and figures following, to wit:

133 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that on the twenty-third day of March, anno Domini 1860, Dion Bourcicault, of the said district, hath deposited in this office the title of a book or dramatic composition the title of which is in the words and figures following, to wit: The Colleen Bawn, or The Bride of Garry Owen, a drama in three acts; by Dion Bourcicault. The right whereof he claims as author and proprietor, in conformity with an act of Congress entitled "An act to amend the several acts respecting copyrights."

[SEAL.] GEO. F. BETTS,
Clerk of the Southern District of New York.

[5-cent U. S. rev. stamp, cancelled.]

134 Also the certificate of the same clerk in the same court, under the seal, that on the 6th day of October, 1858, Dion Bourcicault deposited in that office a book or dramatic composition, the title of which is Pauvrette, a drama in 3 acts, and which said certificate is in the words and figures following, to wit:

135 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered, that on the sixth day of October, anno Domini 1858, Dion Bourcicault, of the said district, hath deposited in this office a book or dramatic composition, the title of which is in the words following, to wit: Bourcicault's Dramatic Works, forming the repertoire of Miss Agnes Robertson. No. VII: Pauvrette, a drama in three acts, by Dion Bourcicault, author of London Assurance, Old Heads and Young Hearts, The Irish Heiress, Used Up, The Corsican Brothers, Love and Money, The Willow Copse, The Life of an Actress, The Phantom, Andy Blake, The Chamelion, Victor and Hortense, Genevieve, The Young Actress, Louis the Eleventh, The Knight of Arva, Faust and Marguerite, Janet Pride, George D'Arville, The Poor of New York, Belphegor, Napoleon's
136 Old Guard, Love in a Maze, Alma Mater, A Lover by Proxy, Don Cæsar de Bazan, The Invisible Husband, Sixtus the Fifth, The Prima Donna, Bluebelle, The Cat Changed into a Woman, Una, The Fox Hunt, Jessie Brown, or the Relief of Lucknow, &c., &c., &c. The right whereof he claims as author and proprietor, in

conformity with an act of Congress entitled "An act to amend the several acts respecting copyrights."

[SEAL.] GEO. F. BETTS,
Clerk of the Southern District of New York.

[5-ct. U. S. rev. stamp, cancelled.]

137 Which was all the testimony here offered in behalf of said plaintiff.

And that the said defendant, to maintain the issue upon his part, introduced the following testimony:

138 Albert D. Bradley, a witness called on behalf of the defendant, being duly sworn, was examined in chief by Mr. Bates, and testified as follows:

Q. What is your profession?

A. I am an actor.

Q. Have you been engaged here at Colonel Wood's theatre for some time?

A. I have been in times past.

Q. Lately have you been at the Opera-House?

A. Yes, sir.

Q. Do you know Dion Bourcicault?

A. I do, sir.

Q. When and where did you first know him, and what was he doing?

A. I first met him in Louisville, Ky., in 1857, I think.

Q. What was he doing?

A. Acting with his wife.

Q. Where else have you known him or seen him?

A. I met him at this city the same year.

Q. What was he doing here?

A. The same thing—acting in North's theatre.

Q. When did he leave this country? When was the last you knew anything of him?

139 A. I have seen him since then. I can't state as to when he left the country only from general newspaper intelligence. I should think about 1860 or 1861.

Q. He was at that time engaged in acting himself, and his wife was acting with him?

A. Yes, sir.

Q. How long have you been connected with the stage, directly or indirectly?

A. About sixteen or seventeen years; seventeen I should think.

Q. Do you know anything about this play called the Octoroon?

A. Yes, sir.

Q. You have seen it, have you?

A. Yes, sir.

Q. Acted in it?

A. Yes, sir.

Q. Did you ever see a novel called the Octoroon, published at Toledo, by Mr. Hosmer?

A. I never did. I heard of it.

Q. State what you know about the publication of this play. Have you seen printed copies of the Octoroon?

A. I have not, although I knew that there was one.

Q. Did you personally know of its having been performed all over the country, at various places?

A. Yes, sir; I have seen bills of it being played all over the country, at various places.

140 Q. Has it been performed in the country towns?

A. Yes, sir; in the small towns all over the west.

Q. You say you never saw a printed copy of the Octoroon?

A. No.

Q. How did you acquire your part when you played in it?

A. I played in it at McVicker's theatre. The part was given me by the stage manager.

By the court:

Q. The manuscript you mean?

A. Yes, sir.

Q. How was it about Pauvrette? has that been printed and circulated broadcast?

By Mr. Clarkson. That is admitted.

A. It has.

Q. Have you ever seen a printed copy of Colleen Bawn?

A. Yes, sir.

Q. Where and how often?

A. I have seen a number of copies, fifteen or twenty; I bought a copy from McNally, from which we performed the piece at the Museum.

Q. Do you know whether at that time he had more or less copies of them?

A. I think he had quite a number of them, a large pile of them; I could not say how many.

141 Q. What did you pay for it? Do you know that?

A. I think I paid, as it was rather a thick English book, fifty cents. The English plays of the ordinary size are twenty-five cents, and the thicker ones are different from our American price. They are fifty cents published in Lacy's edition; and the Octoroon, all I can say in reference to that———

Mr. Clarkson. Speak of your own recollection.

A. It was announced on the catalogue. I think announced at the same time with Bourcicault's plays. I saw a catalogue of Lacy's on the back of the play; that is my recollection; I could not be positive about it.

Q. Have you ever performed in either one of those plays elsewhere than in Chicago?

A. Yes, sir.

Q. Where?

A. I performed Colleen Bawn in Milwaukee.

Q. How did you get your part there?

A. It was furnished in manuscript, the same as here.

Q. Did you ever play in the Octoroon elsewhere than here?

A. No, sir; I don't think I did; I have been in the theatre when it was played, but I didn't play it.

Cross-examination.

By Mr. Clarkson:

142 Q. You were the stage manager of Wood's Museum at the time the Colleen Bawn was played here in 1865, or January and March, 1866?

A. Yes, sir.

Q. That is in 1865 and 1866?

A. Yes, sir.

Q. Now you say that you produced that piece from a printed copy?

A. I did at that time. Originally I borrowed the manuscript; that was about 1863 or 1864. I have played it from a printed copy in 1865, which I bought at McNally's.

Q. What copy was it?

A. An English copy.

Q. Did you ever see an American copy of the Colleen Bawn in print?

A. No, sir; not to my knowledge.

D. Do you say now to the court and jury that you saw the Colleen Bawn advertised in a printed edition of the plays that were for sale?

A. Not in that catalogue. I have seen it advertised in the New York Clipper. You can find the advertisement there, I suppose. I saw the plays themselves.

Q. Have you ever seen an authorized copy of the Colleen Bawn or Octoroon in this city?

A. I don't understand the question.

143 Q. Have you ever seen the Colleen Bawn or the Octoroon advertised in any regular catalogue of plays?

A. I don't know as I have seen it in a catalogue, but there are thousands of plays I have not seen in any catalogue.

Q. Have you seen Pauvrette or the Avalanche advertised in any regular catalogue of plays?

A. I don't know that I ever did.

Q. Do you say now that the plays of Colleen Bawn and the Octoroon can be purchased—are to be found on the shelves of McNally and Walsh, in this city, and have been for the past year, as the published plays in this catalogue here?

A. I don't say anything, sir; the facts were these.

Q. Can they be bought in the same way as you can get any other publication in that catalogue?

A. I don't know, for I have not made application in the last two

years for either of them or any of them. I had a copy published by Bourcicault's assignees in England; I believe he was in bankruptcy at that time.

Q. Where is that book?

A. I presume it is at the Museum; I left it there when I retired from the management.

Q. You produced the Octoroon in 1866?

A. Yes, sir.

Q. How did you produce that?

144 A. I produced that from manuscript which I bought of a man whose name I don't recollect now.

Q. What did you give him for it?

A. I think I gave him, I don't recollect, I think a very small sum.

Q. Twenty-five dollars?

A. No, sir; I think that was with another manuscript, and I gave him fifteen dollars for the two.

Q. Was that authorized by Bourcicault?

A. I don't know.

Q. Don't you know it was surreptitious?

A. I don't know anything about it.

Q. Don't you know that there are people who go about offering for sale manuscript plays for money?

A. Yes, sir; frequently.

Q. Is not that so with reference to plays that are not published by authority; that have never been published by authority?

A. Yes, sir.

Q. What do you think about getting hold of manuscript in that way in reference to the owner's rights?

A. I don't know whether the owner gave him authority to sell it or not.

Q. What is your opinion?

145 A. I don't know, I don't have any opinion about it.

Q. You advertised to play these plays didn't you?

A. I don't know whether I did.

Q. You have been a lawyer?

A. Yes, sir.

Q. It was played under your advice and management?

A. Yes, sir. I don't think the matter was called in question. It had become so common that the matter was not called in question. They had been played so much.

Q. Did you pay Mr. Bourcicault anything for playing those plays?

A. I had nothing to do with the pay department.

Q. What is your best recollection about his being paid?

A. I have no recollection about it; I was not the treasurer, I was only the stage manager.

Q. Did you play that piece of Colleen Bawn in your theatre at all, at any time from your recollection of the piece as you have seen it played from memory, at all?

A. I played it from a book, that printed copy I had.

Q. And you also played the Octoroon from that manuscript you had?

A. I played that, yes, sir.

Q. You didn't play that from memory?

146 A. Not from memory particularly, I had played in the piece originally at McVicker's the same part which I played then. The manuscript was not the same in a good many parts.

Direct examination resumed.

Q. Was the Octoroon that you played at the Museum the same manuscript as that of Bourcicault's do you know? Is it the same play?

A. Well, it purports to be the same play, the same name, but the language was different, and some of the situations were different It was imperfect so far as that is concerned.

Q. You say you bought that from some person, you don't remember his name?

A. I think his name was Hapgood. He had been an agent for Lanagan, who had a theatre at Detroit, and he had this manuscript and he offered to sell it me for a mere song, and I bought it.

Cross-examination resumed.

Q. Do you know how he got that manuscript?

A. I have not the slightest knowledge.

Q. You say that the play you played was not substantially Bourcicault's play of the Octoroon?

A. I say it was imperfect; it was not the same; the language was different.

147 Q. Was the Colleen Bawn different?

A. No, sir. It was published. The authorized printed edition was very soon published.

Q. You say the authorized printed edition was very soon published?

A. It was so announced; it was printed by his assignees in London; I think, if you look at the book it will say so.

Thomas Barry, called on behalf of defendant, having been duly sworn, was examined in chief by Mr. Bates, and testified as follows:

Q. You were the stage manager of the Museum?

A. For one short month I was.

Q. You were connected with it theatrically, were you not?

A. Yes, sir.

Q. State in the first place whether you are an Englishman.

A. Yes, sir.

Q. Do you know Mr. Bourcicault?

A. I do sir.

Q. When did you first know of his being in this country, and where, and what was he doing?

A. I think it was in 1852 or 1853, when he first came to this country. I was in New York at the time.

148 Q. Did you see him there?

A. Not there, sir.

Q. When did you first see him, and what was he doing when you first saw him?

A. I first saw him in Boston. He came to play an engagement with me at the Boston theatre.

Q. Where else do you know of his being engaged in playing?

A. Only by report. Not from my own knowledge.

Q. Do you know when he left this country?

A. In 1859 or 1860, I believe.

Q. Did you ever meet him subsequently to this time when you saw him in Boston, at the theatre, with you. Did you meet him personally?

A. I did not.

Q. He has been in England since, so far as you know?

A. I believe he has.

Q. How long have you been connected with the stage?

A. Over fifty years.

Q. You were in the lean and slippered pantaloon, then?

A. I hope not.

By court. Not until you get there?

A. No, sir.

Q. Have you ever played in the Octoroon?

149 A. I think not. I don't remember to.

Q. Have you ever seen a copy of it; a printed copy of the Octoroon?

A. I believe I have seen a copy of it.

Q. Where did you see it?

A. I think I saw it in this city.

Q. At either of the book stores?

A. I think at the Museum.

Q. Do you know anything about the performance of the Octoroon in various parts of the State of Illinois, in the country towns and villages?

A. Only by report.

Q. How is it about Colleen Bawn? Have you ever seen a printed copy of that?

A. I have.

Q. Where did you see that?

A. In this city.

Q. Did you see it at book stores or in the theatre?

A. In the theatre.

Q. How long have you been playing in the city, connected with the stage?

A. Three years, I believe, sir.

Q. You have seen the Pauvrette, of course. Have you seen printed copies of that?

A. Yes, sir.

Q. They are for sale at the book stores. Do you know the fact, ir, that the Octoroon and Colleen Bawn have been for sale here in t he book-stores in the city, that is that you could get them by application?

150 A. Not to my knowledge.

Q. Did you ever play in the Colleen Bawn?

A. Yes, sir.

Q. In the Museum.

A. Yes, sir.

Q. How did you get your part there?

A. From a manuscript.

Q. Did you ever play in the Pauvrette?

A. No, sir.

Q. Nor in the Octoroon, I understand you?

A. I believe not.

Cross-examination.

By Mr. Clarkson:

Q. Mr. Barry, I suppose you are about as conversant with plays as any man in this country?

A. I cannot say that.

Q. Look at that, sir, (handing witness a book,) and state what that is, if you know what it is?

A. It is a catalogue of plays that I have seen very often.

Q. You find there in that catalogue all the plays that are published, do you not—generally—pretty much?

A. No, sir; there are great many published plays that are not here, belonging to the old legitimate drama.

Q. Have you ever seen the Octoroon or the Colleen Bawn

151 advertised for sale in those general catalogues, as you have seen Pauvrette and Andy Blake?

A. Not in this one. I think I have seen a list of Bourcicault's plays published upon the back of another catalogue. I don't know what catalogue it was.

Q. Mr. Bourcicalt's plays?

A. Yes, sir.

Q. Have you ever seen Colleen Bawn or the Octoroon—an American copy of it—in print?

A. I have not, sir.

Q. This copy that you saw, was it not a copy got up by Lacy, in England?

A. I don't know who it was that got it up.

Q. Have you ever seen a printed copy of the Octoroon or Colleen Bawn for sale on the bookseller's shelves, like the other plays?

A. I have not.

Q. Have you ever known such to be the case?

A. No, sir, I have not. I have heard of it, but I don't know it of my own knowledge.

Q. Do you not know that if a man wishes to obtain a printed copy

of the Colleen Bawn or Octoroon, that he has to take a different course with regard to it than to go into a book store and buy one of those published plays?

A. I don't know that.

152 Q. Do you not know that you cannot buy the Colleen Bawn or the Octoroon through McNally under five dollars?

A. I have never had any occasion to inquire the price of one or the other, or whether he had them for sale. Therefore I can't say on that point.

Q. You don't know by what means they were produced at the Museum, of your own knowledge?

A. No, sir.

153 Joseph H. Wood, the defendant, called on behalf of the defendant, having been duly sworn, was examined in chief by Mr. Bates, and testified as follows:

Q. You are the defendant in this suit?

A. Yes, sir; I believe I am.

Q. State, in the first place, whether you know Dion Bourcicault.

A. I have seen him and been introduced to him in this country, and also in England.

Q. How long since you first knew him in this country?

A. In 1854.

Q. What was his occupation, and where was he, and what was he doing?

A. I think I saw him first at New Orleans. He was an actor and manager.

Q. Did you see him in any other of the cities of the country?

Ans. I saw him in New York often; in Philadelphia, and Baltimore and Cincinnati.

Q. What was his continuous business, so far as you know, while he was in this country?

A. The same.

Q. Did you see him in London or in Europe at any time?

A. I did, sir.

Q. Where and when?

A. I was strolling about the streets of London in 1862. I
154 saw the secesh flag floating over a theatre, and I inquired whose it was, and they said Bourcicault's, and I said, "I know him;" and I walked along down towards the theatre—it was at about evening—and I saw him there. He didn't recognize me at the time, but after I had called his attention to some place we had met, he then recognized me. He was living in London at the time.

Q. Did he say anything to you about his home being in England at that time?

A. He said he was living there.

Q. Did he say when he was coming to the United States?

A. He said perhaps when that flag floated over the Capitol, perhaps he would come back there and live, pointing to the secesh flag floating over his theatre.

Q. Did you see him in any other place than in London—in Europe I mean?

A. No, sir.

Q. How long have you been connected with theatrical matters?

A. About sixteen years.

Q. Do you know about this play called the Octoroon?

A. I know it from seeing it played. I have seen it performed at a great many places.

Q. Do you know whether it has ever been published or not?

155 A. I think I have seen a published copy.

Q. Where did you see it?

A. At my Museum.

Q. Do you know who purchased it?

A. I think some of the managers bought it. I think either Mr. Bradley or Mr. Aiken.

Q. Have you ever seen a printed copy of the Colleen Bawn?

A. Yes, sir.

Q. Where and when did you see that?

A. Mr. Bradley had it at the Museum.

Q. Have you ever bought any of these plays yourself at the book stores?

A. No, sir.

Q. Have you ever seen these plays, either the Octoroon or the Colleen Bawn, performed in any of the small towns, such as Peoria?

A. I saw the Colleen Bawn performed at Fort Wayne, and several other places. I have received a great many letters from people saying they had performed the Octoroon so and so, and the Colleen Bawn so and so, and wanting to make engagements with me to play these plays, supposing we would engage people of that kind.

Cross-examination.

By Mr. Clarkson:

Q. Have you ever had the French flag on your theatre?

156 A. Yes, sir.

Q. And the Irish flag?

A. Yes, sir; in fact we have almost all the national flags except the secesh, and that I would not put on.

Q. What do you put them on there for?

A. Well, as a sort of ornament.

Q. As a sort of advertisement, is it not?

A. We have got all classes of people here, and I have been in the habit of doing that for the last fifteen years.

Q. It is a good way of getting people there, is it not?

A. Well, tolerable.

Q. To draw people? If you put a flag on it is noticed?

A. It was a custom that I learned from Mr. Barnum. He used to do that, and I adopted the same rule, more as an ornament than anything else.

Q. You put out a large picture of the "fat woman," and "the giant," too, didn't you?

A. Yes, sir.

Q. And these things are done to get custom?

A. That is what we do it for, sir.

Q. And when you put out the Irish flag, you do it to draw Irishman, and so with the French flag and German? These things
157 are very apt to be done by people to get a notoriety. That is the cause of it with you, is it not?

A. Yes, sir; that is what I done it for.

Q. Do you consider yourself disloyal to the United States of America because you put up an Irish flag?

A. No, sir.

Q. Do you because you put up a French flag?

A. No, sir; I should if I put up a secesh flag.

Q. But you put up those other flags of foreign countries for the purpose of getting a general sort of custom, and a notoriety?

A. We have so many of that class of people here we like to please them all; anybody that has got a half dollar.

Q. Anything that would draw you would put on the top of your theatre to draw, wouldn't you?

A. Anything that is right and proper.

Q. Were there any refugees from the south in London at that time; in England, that you know of?

A. I presume there were.

Direct examination resumed.

Q. Look at this, (handing witness a copy of a play.) Is that the Colleen Bawn?

A. Yes, sir; I think it is. It is one of the books that be-
158 long to my theatre.

Albert A. Wyatt, called on behalf of the defendant, having been duly sworn, was examined in chief by Mr. Bates, and testified as follows:

Q. You have been an actor, have you not?

A. Yes, sir.

Q. Are you now?

A. I am an actor, manager, and dramatic writer.

Q. Will you state to the jury what you know about the Octoroon. Have you ever seen a printed copy of the Octoroon?

A. No, sir.

Q. Have you ever played in it?

A. Yes, sir.

Q. What did you play from?

A. From a written copy.

Q. At the Museum here?

A. Yes, sir.

Q. Have you ever seen the Octoroon performed elsewhere than at the theatre here?

A. Yes, sir; in Little Rock, in Arkansas, I bought a manuscript copy of it.

Q. Who did you buy it from?

159 A. Of a gentleman named Brace. He played the plays there.

Q. Did you ever see it in any other towns along the Mississippi river?

A. Yes, sir; I have played in Dubuque, Iowa. That manuscript was brought by Mr. Linden, who played with Brace.

Q. Did you ever play in the Colleen Bawn—I mean outside of the city?

A. Yes, sir.

Q. Where have you played it?

A. In Vicksburg, Miss., and in Dubuque, Iowa. I have printed copies which I bought in Cincinnati. I have some six or eight printed copies which I bought in 1864 at Riggs & Calby's book store in Cincinnati.

Q. How much did you pay for them?

A. Fifty cents a piece. They were for sale there.

Q. You never saw a printed copy of the Colleen Bawn?

A. Yes, sir; this is the book I speak of.

Q. Have you ever seen a printed copy of the Octoroon?

A. No, sir.

Cross-examination.

By Mr. Clarkson:

Q. Was that an American copy?

A. No, sir; it was English.

160 Q. How lately have you bought a printed copy of the Colleen Bawn in any book store?

A. I have not bought any; as I had eight or ten copies I had no need to buy any.

Q. You got them in Cincinnati?

A. Yes, sir; in the fall of 1864.

Q. Was that an English copy?

A. Yes, sir.

Q. Whose was it, the Lacy edition?

A. I don't remember.

Q. Have you got any of them with you?

A. Not at present.

Q. Where are they?

A. I have not any with me; they are at the Museum, locked up with my things there.

Mr. J. H. McVicker here appeared, and by permission of the court made the following statement in reference to dates alluded to in his testimony previously given:

I first played the Colleen Bawn in October, 1860, and the Octoroon February, 1860.

161 Mark J. McGrath, a witness called in behalf of the defen-

dant, being duly sworn, was examined in chief by Mr. Bates, and testified as follows:

Q. You are the clerk of Mr. McNally in this town, the bookseller, are you not?

A. Yes, sir.

Q. In your business there you deal largely in plays, do you not?

A. Yes, sir.

Q. You have a very large assortment of plays?

A. Yes, sir.

Q. I want to ask you, sir, how long you have been with McNally?

A. Over six years.

Q. It is a place where you sell to the profession and to the public large numbers of various plays, do you not?

A. Yes, sir.

Q. Will you have the kindness to tell the jury whether you have ever seen a printed copy of the Octoroon; if so, when and where, and how many copies?

A. I have seen a printed copy of the Octoroon within six weeks.

Q. Where did you see it?

A. Is it necessary to answer the question?

Q. Yes; did you see it at McNally's?

A. Yes, sir.

162 Q. There is no harm coming to him or you from what you testify to here; he is perfectly safe, I advise you. Have you seen the Colleen Bawn also?

A. Yes, sir.

Q. Have you had copies of them for sale there?

A. Yes, sir.

Q. Where did they come from, from whom, and all about?

A. I will have to say this. We have a regular order in New York for plays—for every play that comes out there—a standing order for plays in New York; of every play that comes out. We have to have so many copies sent to us, and we receive them without there are special orders. We won't send all the time, but any play that is newly published they send us so many copies.

Q. Do you supply the country all around?

A. Any party who sends for them. We received the Colleen Bawn on that general order, and when we sold them all out that we had received on the general order, we could not get any more without we would pay a far larger price for them, but this we can't get from the party that we have the order. We have to make a special order, and send it to the other parties in New York.

Q. These were sent to you; how many copies did you sell, do you suppose?

A. Well, we sold over twenty; twenty sure.

Q. Did you sell them at the same price?

163 A. At the regular price that we would sell any play of the same kind. All English plays are 25 cents, without they are specially notified to be higher than that. Some run to fifty or sixty cents, and there are plays that run up to five dollars; you can't get a copy of the "Colleen Bawn" without paying five dollars for it.

Q. Were these copies published in England?
A. The presumption was that they were.
Q. They purported to be an English edition of the play?
A. Yes, sir.
Q. How is it about the Octoroon? Have you seen more than one copy, or had them for sale since you have been with Mr. McNally?
A. Never, without they are specially ordered.
Q. Suppose anybody comes there and ordered them, would you fill the order?
A. Yes, sir; if he would give the price for them.
By the Court: Do you mean fill the order by copies you have on hand?
A. No, sir; we have to send to New York for them.
Q. But you could fill an order?
A. Yes, sir; we could get them.
By the Court. You suppose so; you don't know?
A. That is, if we get the order for them we could get them.
Q. You believe that?
A. Yes, sir; I should take the order that way and make sure
164 of getting them.
Q. You have furnished the Colléen Bawn?
A. And the Octoroon too.
Q. On such orders?
A. Yes, sir.
Q. Whom do you obtain your supply from in New York?
A. I would rather not state.
Q. Well, I don't care to know.
A. There plays are not in the regular business line. I would rather retain the name, and not say who we get them from.
Q. But you have ordered them, and got them, and sold them, and delivered them?
A. Yes.
Q. And from the course of business that you have already conducted you can furnish plays, if called for and paid for at the prices?
A. Yes, sir.

Cross-examination.

By Mr. Clarkson:

Q. Look at that catalogue, and tell me what it is.
A. This is the catalogue—the presumption is this is the catalogue of nearly all, without they are very recent plays. There are some plays which are published that we have not now in the store, which are not on this catalogue.
Q. That comes to you from New York periodically?
A. Yes, sir; in the regular course of business.
Q. And when new plays are published by authority, you
165 find them on that catalogue, with a late extra edition?
A. There are half a dozen plays, more or less, which are so

recent that they are not on this catalogue; but the next supply of this catalogue they will be on.

Q. Do you find the Octoroon on that list?

A. No, sir.

Q. Or the Colleen Bawn?

A. No, sir.

Q. Did you ever find them on?

A. No, sir.

Q. Do you find Pauvrette there?

A. Yes, sir.

Q. That is a published book?

A. Yes, sir.

Q. Copyrighted by authority?

A. I could not say whether it is copyrighted.

Q. Have you ever seen an American print of the Octoroon, to your knowledge?

A. I could not say. These plays which we get we presume that they are English plays. They are got up, if not published—got up on the same kind of paper—published on that same kind of paper, and with the same kind of type, that I suppose they are English copies.

Q. How is it about the Colleen Bawn?

A. That is an English copy.

Q. Have you had the Colleen Bawn or Octoroon on your shelves for sale for one year, or two years?

166 A. No, sir; it may be a little over two, and it may not be two years.

Q. What is the reason you havn't had it on your shelves for sale openly?

A. Because we can't get it to sell for the same price as the others.

Q. Is that the only reason?

A. No; it is not.

Q. Speak out.

A. It is not.

Q. Why don't you have the Octoroon on your shelves? Is that the only reason, that you have to pay more for it?

A. As far as my knowledge goes ——

Q. You have answered frankly about the others; is there any other reason?

A. As far as my knowledge of the Octoroon and Colleen Bawn goes, I don't know whether they are copyrighted, or anything about them; only, if we want to get them, we have to pay more money for them.

Q. The English of it is this: you buy the Octoroon, and you buy the Colleen Bawn, when a man makes a special order for it, on the sly. That is the English of it; is not that so?

A. We can't get them from the party who furnishes us with the plays.

Q. You can't get them on your regular orders?

167 A. No, sir.

Q. Can't you send on regular orders to New York and buy them?

A. No, sir; not from him.
Q. What does a man pay if he wants the Octoroon?
A. I don't know if that would be right.
Q. I want to know.
A. Because this man in New York might change his price.
Q. And what is the price now?
A. We furnish them for five dollars apiece.
Q. The Colleen Bawn for five dollars?
A. Yes, sir.
Q. And Pauvrette for fifteen cents? There is some difference.
A. Yes, sir.
Q. What constitutes the difference?
A. Well, so far as I can say myself, the sale of the plays is restricted.
Q. In other words, you are selling them though you know it is contrary to law. Don't you believe that is so?
A. As far as I know myself, I don't know that I am selling them contrary to law. My impression as an individual is this: that these plays belong to Boucicault, and that he has so many law suits on his hands—that is what I have heard the profession say—that they
168 can be slipped in. He can't get at them at all.
Q. That is true exactly. He has had so much trouble trying to protect his plays that you can slip them in, and sell them.
A. That is my impression, that that is the fact.
Q. How long have you been in the play business?
A. Well, sir, I have been selling for over six years.
Q. Have you ever known the Colleen Bawn or the Octoroon to be published by the authority of Mr. Boucicault or his agents?
A. I have no means at all to get at it, to know; all I know is, when we send an order to New York for a play, if the party who furnishes this play—if it is not in the regular business form—he will say, that play can be got for so much; he does not furnish it, but he will be polite enough to say where it can be had.
Q. These were English copies of the Colleen Bawn you sold originally?
A. I suppose so.
Q. When that stock ran out, you say that you could not fill it again?
A. No, sir.
Q. You were told they were not in the market, and could not be had except at a large price?
A. Except at a large price.
Q. And now since that time, since anybody comes to you
169 and wants to get that book, you tell him how much it will cost, and you will get it for him?
A. Yes, sir.
Q. And you have your way of getting it?
A. Yes, sir.
Q. And you don't tell people where you get it?
A. I would rather not; we don't get it in the regular course of business; still we have no difficulty at all in getting the play.

Q. Don't you know as a matter of fact, as a publisher or as conversant with these things—don't you know as a matter of fact that there are books prohibited by law that can be got by publishers in a certain way of their own for a large profit, books of a different character, even?

A. Yes; but then the parties selling these books are liable to prosecution for selling them; I don't suppose I am liable if I go on and sell the books you have referred to; he has nothing to do but turn me over to the policeman and have me arrested, in selling the other kind of books, but this book I should have no hesitation at all in resisting a policeman that would offer to arrest me for selling the Colleen Bawn, or the Octoroon, because I should think he was going outside of his business to do so; but these other books, any
170 policeman could arrest me for selling.

Q. There are some books the sale of which is a criminal act; there are other books the sale of which is not a criminal act, but only making you liable to a civil suit, for which no policeman can arrest you; now apart from the fact—I have asked you the question whether you don't know that there are other books that as a publisher you can get in a way of your own for a party who might order them, by paying a large sum of money—which are restricted by law from being published?

A. No; it is not necessary; I don't always so understand "restrict." At the present time I have an order in New York now for a book; they sent us back word that there is but one copy in New York, and if we want it we will have to pay so much for it; the party who ordered it from me says he, "You write to New York and get to know for me the size and the form of the book, and whether it is new or old;" now I don't know whether it is a restricted book, or anything at all; it is a book pertaining to theatricals; I suppose it is from the name of it; it is called "Thirty-six Years of an Actor's Life;" I don't know—I have no means of knowing whether the book
171 is restricted or not; they write to me that if we want this book it will be so much; there is only one copy of it in New York.

Q. When those English books that you had of the Colleen Bawn had run out, and you had no more upon your shelves to furnish to people, and could not supply an order, I ask you whether you did not understand at that time that the reason why you could not get those books was because they had been interfered with—the sale of them had been interfered with by law?

A. Yes, sir; we understood—at least they didn't inform us, but I understood from the manner that they refused to supply any more, that they could not do it legally—not in the regular course of business.

Q. Have they not, since that time, been supplied surreptitiously?

A. Well, you can see the advertisement I suppose, in the Clipper almost any week, that a man had them for sale, if you call that surreptitious; people in the profession will come in and say, "I see such a play advertised in the Clipper."

Q. Have you ever seen it advertised there?

A. I have never seen it myself.

Q. Do you know it is?

A. I have no other means of knowing; I only know what
172 they state.

Q. Don't state, then.

A. I never took the trouble of looking; they come in to me and say such a play advertised in the Clipper; but I never saw it advertised in the Clipper; I never took the trouble; I took their word for it.

Q. And then you told them it cost so much to get the book?

A. It cost so much; and I would not order the book without they paid the money down.

Q. What do you have to pay for the book when you get it?

A. We have to pay different things; I could not say; [I could not say.]

Q. A larger sum of money than you would have to pay in the regular course of business?

A. Yes, sir, much larger; twenty times as much; may be more than that.

Q. Has the Colleen Bawn been sold by McNally on his shelves, as he sells the other plays, for years past, and has within the last two years, as he has the other plays?

A. You will understand me; the first lot we got, it may a little over two years, but my impression is that it is about two years ago since we got the first lot of the Colleen Bawn; now I could
173 not say without I would refer right back to the bills who they came from; but I could find it.

Q. How many were there of that lot?

A. Over twenty; they were put on the shelves, and any man at all could go to the shelves and buy one of them for twenty-five cents; I think they were all sold for twenty-five cents, and then the order was put on the order book and went with the regular order.

Q. And you understand then what the reason was?

A. Because there was some trouble between the party who held the copyright of the play and the publishers.

Q. Since that time, the only way you get them is in the way of which you have spoken?

A. Yes, sir.

Re-direct examination.

By Mr. Bates:

Q. I understand you to say that these published plays, the Octoroon and the Colleen Bawn, that you saw at McNally's, were apparently published in England.

A. Yes, sir.

Q. How long is it since you saw the Octoroon? You say you saw one copy within a few days?

A. Within six weeks.

174 Q. Have you seen other copies within the last two years, of the Octoroon?

A. I must have seen them; [I must have seen them;] I could not say particularly; I must have seen them in that time; I could not say particularly as to the time; but the very first time that Mr. Clarkson spoke to me about this case—I believe that very time—I told him that I had filed an order with the Octoroon; I believe I showed the order I had on the book.

Re-cross examination.

By Mr. Clarkson:

Q. That is a regular list of Lacy's edition of plays?

A. Yes, sir.

Q. Do you know who purported to publish that English copy that you saw—whether it was Lacy?

A. I could not say; I received the impression that it would be published by Lacy.

Q. You got that idea?

A. Yes, sir; I didn't take notice of it, but from the appearance of the book, it was one of Lacy's books.

Re-direct examination resumed.

Q. Do you take the New York Clipper at your place?

A. Yes, sir.

175 Q. Is it a weekly or semi-weekly?

A. A weekly.

Q. Have you any copies there now, do you know?

A. Yes, sir; we have them there. I don't know that I could hunt up one of the advertisements. I have never seen them, only as I have been told. Sometimes people come in and clip the advertisement out, and just hand it to me.

Which was all the testimony here offered on behalf of the said defendant.

And that the said plaintiff, to further maintain the [the] said issue upon his part, offered the following testimony:

John R. Walsh, a witness called on behalf of the plaintiff, being duly sworn, was examined in chief by Mr. Clarkson, and testified as follows:

Q. What is your business?

A. Bookseller and news agent.

Q. How long have you been engaged in that business, either for yourself or with others?

A. Some 12 or 15 years.

Q. You have now an establishment of your own, that you conduct—have principal charge?

A. Yes, sir.

Q. In this city?

176 A. Yes, sir.

Q. Have you been in the habit for years past of dealing in plays—having them on your shelves for sale?

A. Yes, sir.

Q. Dramatic compositions of different kinds?

A. Yes, sir.

Q. Will you look at this catalogue, and state what it is, Mr. Walsh, and whether you get this periodically?

A. It is a catalogue of plays, published by French; it also includes a lot of English plays, which he imports.

Q. Contains the plays which you receive?

A. French, I believe, publishes nearly all of the plays.

Q. Do you receive that from him?

A. Yes, sir; once every two or three months.

Q. The authorized plays are printed in that?

A. Yes, plays that are published by French are advertised here.

Q. Don't you have the Lacy, Webster and Cumberland?

A. Yes, sir; these are not published, but sold by him.

Q. Do you find on that catalogue any advertisement of the Colleen Bawn?

A. No, sir.

Q. Or the Octoroon?

A. No, sir.

Q. You never found it, did you?

A. I have never seen it.

Q. Have you ever seen a printed copy of either of them?

177 A. Yes, sir; of both.

Q. How is it with Pauvrette, is it on the list?

A. I don't remember, I think it is; Andy Blake is on the list, I know.

Q. Have you the Colleen Bawn for sale in your store?

A. No, sir.

Q. The Octoroon?

A. No, sir.

Q. Have you had it for any length of time?

A. Not lately.

Q. Do you undertake sometimes to furnish a copy, if he wants it?

A. I don't remember any orders of that kind.

Q. Would you get it in the regular way if you had?

A. Yes, sir; we should probably order it from French, if we could not get it from him, we would hand it back to the customer.

Q. It would cost more than other plays?

A. Yes, sir.

Q. What was the cost of one of those?

A. I don't remember. The cost of the play when it was first published, when the thing was printed, there were a few copies printed and sold, and if I remember right, it suddenly became scarce.

Q. There were a few printed copies sold?

A. Yes, sir.

Q. And it suddenly became scarce?

A. Yes, sir. Since then I don't remember our having had

178 any order.

Q. Do you know why it was getting scarce?

A. I don't know.

Q. You know they could not be got except in a certain way, outside of your regular course of business?

A. I don't know what you mean by the regular course of business. We should send the order the same way that we sent for any other play.

Q. Do you know why it costs $5 to get one?

A. Not of my own knowledge. I could guess, I suppose.

Q. Don't you know that the sale of these printed copies, which used to be sold some time ago, was interfered with?

A. I heard of it.

Q. And that has been the occasion of the increased price since that time?

A. I presume that is the reason.

By Mr. Bates. Don't state anything that you don't know yourself.

Cross-examination.

By Mr. Bates:

Q. I understand you to say you did have copies of the Colleen Bawn?

A. I could not say how many.

Q. You did have copies of it?

A. I think so.

Q. How long since?

A. Some time.

179 Q. A year or two?

A. About that, I guess.

Q. Did you ever have any copies of the Octoroon?

A. I don't remember the Octoroon.

Q. Suppose an order comes to you for the Octoroon and the Colleen Bawn, can't you fill that order and get the books?

A. We should only send it to our correspondent from whom we buy plays. We could not fill it from the store, because we havn't had copies.

Q. Do you know whether you have, in the course of your business, sent for copies of those plays, and got them?

A. I could not remember any particular instance.

Q. They are in print, and can be got by payment for them, like any other book, can't they?

A. I doubt that very much. It is difficult to get it. If the play was publicly for sale, general sale, we should have copies in the store.

Q. Do you deal with that firm, French & Co.?

A. Yes, sir.

Q. They import English plays?

A. Yes, sir.

Q. Do you know whether these plays, Colleen Bawn, and the Octoroon, purported to be published in England?

A. I could not say. The play is quite an item in business now.

189 Q. You don't know whether these two plays can be got in England; whether they are published in England?

A. I do not.

Which was all the testimony offered on behalf of said plaintiff.

And that the said defendant, further to maintain the issue upon his part, introduce the following evidence:

The counsel for the defendant read in evidence a letter of which the following is a copy:

Geo. C. Bates, esq.:

DEAR SIR: I went to London as secretary of legation, in April, 1861, and returned in September, 1864. I knew Mr. Boucicault as a resident there, during that time, as chief manager of the Adelphi, and afterwards of Astley's. I am well acquainted with Mr. Boucicault, and know him to be of English parentage, and that his home was in London during my whole residence there.

I am, very truly,

(Signed) CHAS L. WILSON.

Which was all the evidence offered by either of said parties.

181 By Mr. Bates:

I think I am entitled to ask the court to instruct the jury under the statute that the plaintiff has not made out any case; that he has got to make out his case, by showing a compliance with the statute. The first thing to be done is, to file the title-page, and the next thing to deposit within three months a copy of the book; the next, to stamp on the title leaf, "Entered according to act of Congress." He has failed to do that with reference to all of them, excepting Pauvrette.

Which motion was overruled by the court, to which ruling of the court, the counsel for the defendant then and there excepted.

182 And the court thereupon charged the jury in substance as follows:

The act of 1831 protected the author of any book in the right to print and publish such book, provided he was a citizen of the United States, or a resident therein. The fourth section of that act declared how such author should proceed in order to make that protection available to him. It declared that he should not be entitled to the benefit of the act unless before publication he deposited a printed copy of the title of the book in the clerk's office of the District Court of the district wherein he resided.

The fifth section declared that no person should be entitled to the benefit of the act unless he gave information of the copyright being secured, by causing to be inserted in the copy of each and every edition published during the term secured, on the title page or the page

immediately following it, a notice of the fact of such right being secured to him, and the words by which such notice was to be given were specified in that section.

The sixth section of the act provided for the recovery of certain penalties, if any person or persons, after the recording of the title of the book, should publish, import, or cause to be printed
183 or imported, any copy of such book, without the consent of the person legally entitled to the copyright thereof, first had in writing, and a forfeiture in money could be enforced by an action of debt.

The seventh section made the same provision substantially in relation to certain other works, such as a print, cut, or engraving, map, chart, or musical composition.

It is apparent from what has been stated in relation to these various sections of the law of 1831, that there was a right of action before the publication was actually made. The fourth section of the act provided that the author of a book within three months from the publication should cause to be delivered a copy of the same to the clerk of the district, but, from what has been already stated, it is clear that a right of action accrued before the deposit of this copy of the book, because the language of the sixth and seventh sections is express, that if any other person or persons, from and after the recording of the title of the book, should violate any of the provisions of those sections, they were liable to an action for the benefit of the author, so that under the act of 1831, there can be no doubt, that not only a suit in equity, but at law, could be maintained
184 before the publication of the work for the benefit of any party aggrieved.

Turning, then, to the act of 1856, and construing it by the light thrown upon the subject by the previous act of 1831, the question is, what rights there are under the more recent statute.

The act was declared to be supplemental to the act of 1831, and it set forth that any copyright hereafter granted under the laws of the United States to the author or proprietor of any dramatic composition designed or suited for public representation shall be deemed and taken to confer upon the said author or proprietor, his heirs or assigns, along with the sole right to print and publish the said composition, the sole right also to act, perform or represent the same, or cause it to be acted, performed or represented, on any stage or public place during the whole period for which the copyright is obtained.

It will be observed that this act speaks of a copyright being obtained and granted, but it is clear that it does not necessarily mean that the title of the work shall be deposited with the clerk of the District Court and publication made, because that is not the
185 meaning of the term in the original law to which this is supplemental, as will be seen from what has been already said. The language of the fifth section of the act of 1831 is, that no person shall be entitled to the benefit of this act unless he shall give information of the copyright. That section must be construed with

the other sections which immediately follow it, the sixth and seventh, and of course it is not intended by this language to deprive a party who may be injured from his action between the time of filing the title in the clerk's office and the time of publication. As I have already said, it in terms gives the right of action in such case. Then this supplemental act does not necessarily mean, by the term "copyright being granted," that the book has been published and notice given; otherwise the author of a book under the act of 1831 would have a more complete remedy than the author of a play under the supplemental act of 1856, so that, comparing the two acts together, and construing the latter act by the light thrown upon the subject by the various provisions of the prior act, I think we may arrive at a conclusion as to what is the meaning of this clause of the act of 1856, namely, "and any manager, actor or other person acting, per-
186 forming, or representing the said composition without or against the consent of said author or proprietor, his heirs or assigns, shall be liable for damages to be sued for and recovered by an action on the case, or other equivalent remedy, with costs of suit in any court of the United States, such damages in all cases to be rated and assessed at such sum, not less than one hundred dollars for the first, and fifty dollars for every subsequent performance, as to the court having cognizance thereof shall appear to be just;" and it is this: that the act of 1831 having given a right of action between the time of filing the title of the book in the clerk's office and the time of publication, the above clause in the supplemental act also gives the right of action.

It seems to me that a little reflection will convince us that that must be necessarily be so, and must have been the intention of this supplemental act. It is plain that the reason why the act was passed was because the prior law did not give sufficient protection to the author of a play. The principal profits derived from plays are their representations on the boards of a theatre. Now, it is apparent that if that representation could be made at any time without the
187 consent of the author of the work, he would be injured pecuniarily in the profits to be derived from his work, because it is from that source, principally, that the profits are expected to come. The injury, it is apparent, would be just as great, and in most instances it may be presumed greater, by the representation of his play before its publication than it would after. Take the case of the composition of a dramatic work, and notice given as the law requires by leaving the title-page with the clerk, and after that is done, the obtaining by clandestine or surreptitious means of a copy of that play, and representing it upon the stage of a theatre publicly, that, of course, would be an injury pecuniarily to the author. The question then is, whether the law did not intend to protect the author against such use without his consent. I think that it did. I think when it says that any manager, actor, or other person who shall represent the composition without the consent of the author shall be liable for damages to be sued for and recovered by an action on the case, it means as well a representation made before as after publication.

Undoubtedly the act of 1831 contemplated a publication
188 after the filing and deposit of a printed copy of the title-page of the work in the clerk's office, but it did not specify how soon that publication should be made, and as in this case there is evidence of the representation of "The Octoroon" and "Colleen Bawn" in various parts of the country for some time past yet as there is also evidence showing that for many representations made compensation was given to the plaintiff, I am not prepared to say, that under the circumstances of this case he has lost the right of action merely in consequence of the non-publication by him of these plays.

It is conceded that there would be a complete and perfect remedy in a court of equity, and I do not know why there should not be in a court of law. Action on the case means an action brought in a court of law. It is under the words "other equivalent remedy" that the party could have recourse to a court of equity—so that as to the main question of law there is in the case, I think that the action can be maintained.

To all which the defendants then and there excepted.

189 And the court further charged the jury in substance as follows:

But of course there are other questions which must be decided in favor of the plaintiff before he can recover in this case, independent of these questions of law. As you will have seen, gentlemen of the jury, from what the court has already said, before a party is entitled to the benefits of these acts, you must be satisfied that he has brought himself within these premises. A fundamental principle is, that he must be a citizen or a resident of the United States.

The first question for you to determine is whether this plaintiff is within this provision of the law. He was not born in the United States and has never been naturalized. The only question is, is he a resident, or rather was he a resident of the United States at the time that he filed in the office of the clerk of the court of the southern district of New York the titles of the various plays which are in controversy here, namely, "Pauvrette," "The Octoroon" and "Colleen Bawn." The title of the first was filed on the 2nd day of September, 1858; the second, the 12th of December, 1859, and the third on
190 the 23d day of March, 1860. The question is, whether at the time these acts were done by plaintiff he was a resident within the meaning of these acts of Congress. That is a mixed question of law and of fact. Residence ordinarily means domicile, or the continuance of a person in a place, having his home there. Of course, it is not actually necessary that he should be the occupant of his own house. He may be a boarder, or lodger in the house of another. The main question in connection with this matter is as to the intention with which the man or person is staying in a particular place. In order to constitute residence, it is necessary that a man should go to the place and take up his abode there with the intention of remaining—making it his home—his place of abode. If he does that, then

he is a resident of that place, and we speak of this in contradistinction to the case of a person who goes to a place with the intention of remaining there temporarily, or for a short time, without any idea of taking up his abode or making his home there. This question of residence or non-residence is not to be determined by the length
191 of time that the person may remain there. For example, a man may go into a town and take up his abode there with the intention of remaining, and if so, he may be said to become a resident of that place, although in point of fact he may afterwards change his mind, and within a short time remove from that place, even within a few months. The question you will see that is to be determined is the state of mind accompanied with acts of the man at the time that he goes to the place and takes up his abode there. So a person may go to a town, and if he goes there with the intention of only remaining for a limited time, and of leaving the town, although in point of fact he may remain there for a year or more, still it does not constitute him a resident of the town, or of the place, because he does not go there and take up his abode with the intention or the purpose which existed in the other case, so that it is not to be determined by the length of time, but by the intention existing in the mind of the person, coupled with acts, which acts and intent are to indicate whether or not he is a resident of the place.

192 Applying these rules to the case before you, it is for you to determine whether under the evidence this plaintiff has brought himself within the case which I have supposed as necessary, in order to constitute a man a resident of a particular place.

The plaintiff came to this country, I think the evidence showed, in 1853; he remained here pursuing his profession as an actor and an author until the fall of 1860, or the spring of 1861; he went to New York, and took up his abode in New York city and remained there some years. The question for you to determine is, whether when he was here pursuing his profession, travelling about the country from 1853 and so on, up until the time that he took up what we may call his residence (without meaning by that such a residence as is spoken of in the act of Congress) in New York, he came here and continued here and in New York with the intention of remaining and taking up his abode as one of the people of this country; when he took a house in New York city, as it claimed there is some evidence to show that he did, did he occupy that
193 house with the intention of remaining in the country? If he did, with the intention of remaining permanently in this country, then I think he was a resident within the meaning of the law, although he might have changed his mind afterwards, and returned to England.

But you must believe from the evidence that the intention existed at the time, and that he did not at that time intend to return to England, but that his intention then was to remain here, and that this idea of returning to England afterwards arose in his mind, although there is no evidence really, that I know of, of his actual status in England, only that he has been there since 1860 or 1861 managing a threatre. We

only know that by the defendant, and perhaps from another party; we do not know what his intention is, further than may be inferred from these acts, so that, gentlemen, it is for you to determine, under the facts of the case, whether within this description of the term residence Mr. Bourcicault was, at the time these titles were filed in the clerk's office in the southern district of New York, a resi-
194 dent of this country. If he was, then I think he was entitled to the protection of these laws. If he was not, if he was a wayfarer, a sojourner, a mere transient person, then I think that he was not entitled to their protection.

If he was a resident of the United States, then, being entitled to the protection of the law, his rights are to be determined by the law. In relation to the play of "Pauvrette," or what has been called by some of the witnesses "The avalanche, or Under the Snow," there does not seem to be any serious controversy. A copy of that play was deposited in the clerk's office on the 6th day of October, 1858, so that, as to that, if he were a resident, Mr. Bourcicault complied in all respects with the law. It is not claimed but that he did, so far as obtaining a copyright, as I understand; that has been published, by which we mean it has been printed under the authority of Mr. Bourcicault himself, and the only question would be, whether the conduct of Mr. Bourcicault has been such in relation to this play as to deprive him of the protection of the act of 1856.

As I have already said, he had the right under that act, and the sole right to print and publish that play; he had also the sole
195 right to act and perform it, or cause it to be acted, performed, or represented on any stage or public place, and no person could do either one or the other without his consent. The only question then, in relation to this, is whether he was a resident, or has consented to the representation of this play of "Pauvrette," or "Avalanche, or Under the Snow," by the defendant. If you are satisfied that he has consented to it, then the defendant would not be liable for the performance of that play.

In relation to this, as in relation to the other plays, you must, of course, be satisfied that the plays performed were the identical plays of which Mr. Bourcicault was the author. It is not necessary that it should be identical word for word; but the idea is, that another has not the right to use the work of Mr. Bourcicault's brain in the construction of a play without his consent, and the mere alteration of a portion of the language of the play would not deprive Mr. Bourcicault of his protection under the law, provided there was a use of the play in all respects substantially. I think that there ought to be some affirmative evidence introduced on the part of the
196 defendant that Mr. Bourcicault by word or deed—consented to the performance of this play by the defendant,—"Pauvrette," I mean—because it is perfectly clear that the act of 1856 gave the right to the author not only to perform, but to publish it, and declared that no one should perform it without his consent. The mere fact that it was published did not give others the right to enact it, or perform it in a theatre; it must be done with his consent or

acquiescence, and there ought to be some evidence that it was so done by the defendant.

As to the other plays, the "Colleen Bawn" and the "Octoroon," there is no evidence that these plays were ever published by the plaintiff in this country, and the only question for you to determine would be, so far as this country is concerned, whether the use of the manuscripts of these plays by the defendant was with the consent or acquiescence of the plaintiff.

There is evidence tending to show that these two plays were published, that is printed, and that this publication was made in England. I do not think that should make any difference as to the
197 right of the plaintiff, unless that publication was with the consent of the plaintiff. If these plays were published in England with his consent, after what took place in this country, I think that any American actor or manager would have the right to import these plays from England and use them upon his stage. The question for you to determine is whether there is any evidence satisfying you that this publication was made with the consent and under the authority of Mr. Bourcicault—I mean the publications that were made in England. You must be satisfied, from some evidence in the case, I think, that they were published with his consent; otherwise there would not be a right in an actor or manager to import them and represent them in this country.

To all that part of the latter portion of the charge, commencing with the words, "there is evidence tending to show that these two plays were published," &c., and ending with the words, "there would not be a right in an actor or manager to import them and represent them in this country," the defendant then and there excepted.

And the court further charged the jury in substance, as fol-
198 lows :

But if they were so published with his consent, I think they would have that right, because then there is an abandonment of the rights under our laws, and he is placed simply in the position of an ordinary English dramatist, who has made publication of his play in his own country. He does not seek, in other words, to follow up the beginning of the protection which our law gave him, but resorts to publication in England instead of publication in this country, where, if he were a resident, he would have the right and would be protected, so that the question for you to determine is whether he did make the publication in England, and of that I think there should be some affirmative evidence to satisfy you that such is the fact.

This substantially, with one other remark, disposes of the rights of the party under the law in relation to copyright; that law prescribes a particular penalty for the unauthorized performance of a play, in the first instance not less than one hundred dollars, and for every subsequent performance fifty dollars, leaving a certain discre-
199 tion with the court upon that subject, "as to the court having cognizance thereof shall appear to be just;" in other words, it does not necessarily follow, that in all cases the precise penalty fixed to the violation of the law shall be given, but the court is to exercise a certain discretion in relation to the matter.

There is another branch of the case under which it is claimed the plaintiff is entitled to protection, and that is under what is termed the common law right, irrespective and independent entirely of the statute, and because there has been no publication of the "Octoroon" and "Colleen Bawn" by Mr. Bourcicault, or under his authority. If that be so, then he is entitled to the property in his work existing in manuscript, and nobody can use it without his consent, and if it is so used, every person so using it is liable to respond in damages to him for such use; you will understand that there is no question raised in this branch of the case in relation to "Pauvrette," because that was published with his consent, and if he is not protected under the law he is not protected at all, because, having published it himself, he has given it to the public, and the only shield he has is the
200 law; but if he has not published the other two, then he is protected at the common law, as I understand it, in the property to his manuscripts.

It is admitted on the part of the plaintiff that if a play is performed upon a public theatre, and there is a representation of the same from the mere fact of hearing the play performed, that does not constitute a violation of the law; how far that may be true it is not necessary for me to decide, because the evidence seems to show that these plays were performed sometimes, at any rate, by means of manuscripts; it is then necessary that it should be shown to your satisfaction that these were used with the consent or acquiescence of the plaintiff.

The question for you to determine on this branch of the case is whether he has ever published these works; and if he has not, whether the defendant has used them, obtaining them surreptitiously or from any person without his consent. He would have a right to perform his own plays, to authorize their performance, or he would have the right to dispose of his property, either in whole or in part, to any one that he chose; the question for you to determine is, if he has not published these works, if he has so disposed of them or acqui-
201 esced in the performance of these works by the defendant. I admit also, that conceding that he has not published them, he may also act in relation to them as to perhaps deprive himself of the right of calling upon a person to respond in damages for the representation, that is to say, if he has allowed these plays to be represented throughout the community for a long space of time without license and without objection, knowing the fact to be so, then I think he may be considered to have abandoned the use of them to the public.

But it must be apparent that it has been done with his knowledge and without objection upon his part; that is to say, the facts must exist to indicate that he consented or acquiesced in their performance, otherwise he is not prevented from claiming his property in these plays. I mean, of course, his property at common law, as has been explained to you.

But you will see that under this branch of the case there is no limit as in the statute to the amount of damages, but it simply then comes, if you believe that the defendant is responsible in damages for

202 the representation of these plays, to the question as to the damages which the plaintiff has actually sustained by the use of the plays by the defendant; that is a question of proof to be determined by the evidence in the case, and in relation to which you are to form your own conclusions. These plays were performed, it appears—"Colleen Bawn" and the "Octoroon"—sixteen times, eight times each, by the defendant in his theatre.

It is for you to say, or putting the case upon the ground of common law right, if the plaintiff has been damaged, to what extent he has been damnified by these representations, by the defendant, of these plays. As I have already said, there is no question in this branch of the case in relation to "Pauvrette," because that was published, and his rights there stand upon the statute.

To all that part of the latter portion of the charge, commencing with the words, "there is another branch of the case under which it is claimed the plaintiff is entitled to protection, and that is under what is termed the common law right," &c., to the end of
203 the charge, the defendant then and there excepted.

The jury having been absent some time returned into court, and asked the court if they understood the court correctly that they could find a verdict under the common law counts; and the court said they could, if they believed the evidence justified such finding; and in a short time they returned into court with their verdict. When they returned the court asked them how they had found upon the subject of residence, (as that had been much discussed during the argument,) and they said they did not all agree on the question of residence. Some of them thought that the plaintiff was a resident, and others thought he was not; but they had all agreed on the verdict which they had found.

And after the verdict was rendered and recorded the defendant moved in arrest of judgment, because there was a misjoinder of counts in the declaration, viz: counts under the acts of Congress, and counts under the rights claimed at common law, and no
204 judgment could be entered thereon, which motion the court overruled, and entered judgment on the verdict of the jury.

To which opinion of the court in overruling said motion and entering judgment the defendant then and there excepted.

[SEAL.] THOMAS DRUMMOND.

Endorsed: Filed Nov. 30th, 1867. Wm. H. Bradley, clerk.

On this day, to wit, the 18th day of November, in the adjourned October term, A. D. 1867, of said court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

DION BOURCICAULT
vs.
JOSEPH H. WOOD. } Trespass on the case.

Now come the parties, by their attorneys, and now comes on to be heard the motion of the defendant heretofore entered herein for a

new trial of this cause and in arrest of judgment; and, after hearing the opening argument on the part of the defendant, the further hearing is postponed until to-morrow morning.

205 On this day, to wit, the 19th day of November, in the adjourned October term, A. D. 1867, of said court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

DION BOURCICAULT } Trespass on the case.
vs.
JOSEPH H. WOOD. }

Now come again the parties, by their attorneys; and now comes on further to be heard the motion of the defendant for
206 a new trial of this cause and in arrest of judgment, and after hearing the concluding arguments of counsel the court takes the same under advisement.

On this day, to wit, the 30th day of November, in the adjourned October term, A. D. 1867, of said court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

DION BOURCICAULT } Trespass on the case.
vs.
JOSEPH H. WOOD. }

The court having considered, and being now fully advised upon the motion of the defendant heretofore entered herein for a new trial of this cause and in arrest of judgment, overrules the same; it is thereupon considered and adjudged by the court that the said plaintiff do have and recover of the said defendant the said sum of nine hundred dollars, his damages so as aforesaid assessed, together with his costs and charges by him about his suit in this behalf expended, amounting to the sum of dollars and cents, and that he have execution therefor.

207 On this day, to wit, the ninth day of December, A. D. 1867, came said defendant, by his attorneys, and filed his appeal bond in said entitled cause, which, said appeal bond is in the words and figures following, to wit:

208 Supreme Court of the United States.

DION BOURCICAULT } In error.
vs.
JOSEPH H. WOOD. }

Know all men, by these presents, that we, Joseph H. Wood and Henry Fuller, of Chicago, Illinois, are held and firmly bound unto the above-named Dion Bourcicault in the sum of two thousand dollars, lawful money of the United States, to be paid to the said Dion Bourcicault,

his executors, or administrators, to which payment, well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 4th day of December, A. D. 1867.

Whereas the above-named Joseph Wood has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the Circuit Court of the United States for the northern district of Iilinois :

Now, therefore, the condition of this obligation is such, that if the above-named Joseph Wood shall prosecute his said writ of
209 error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

[SEAL.] J. H. WOOD.
[SEAL.] HENRY FULLER.

Approved:

THOMAS DRUMMOND.

Endorsed: Filed Decb. 9th, 1867. Wm. H. Bradley, cl'k.

210 NORTHERN DISTRICT OF ILLINOIS, *ss*:

I, William H. Bradley, clerk of the Circuit Court of the United States for said northern district of Illinois, do hereby certify the foregoing transcript, embracing two hundred and nine pages, (209,) to be a true, full and perfect copy from the record of all the proceedings which have been had in said court, in said cause of Joseph C. Woods, plaintiff in error, against Dion Bourcicault, defendant in error, as the original of the same now remains in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said northern district, this twenty-seventh day of December, A. D. 1867.

WM. H. BRADLEY, *Clerk*.

[5-cent U. S. rev. stamp.]

211 Circuit Court of the United States, northern district of Illinois.

The United States of America to the judges of the Circuit Court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment, in a plea, which is in the said court before you, between Dion Bourcicault, plaintiff, and Joseph H. Wood, defendant, a manifest error hath happened to the great damage of the said Joseph H. Wood, as by his complaint appears: and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid

with all things concerning the same. to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record
212 and proceedings being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United Sates, this second day of December, in the year of our Lord one thousand eight hundred and sixty-seven, and of our independence the ninety-second year.

WM. H. BRADLEY, *Clerk.*

Endorsed: Circuit Court U. S. northern dist. of Ill's. Dion Bourcicault *vs.* Joseph H. Wood. Writ of error.

213 The United States of America to Dion Bourcicalt, greeting·

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at a term thereof to be begun and holden in the city of Washington, in the District of Columbia, on the first Monday of December, 1867, pursuant to a writ of error filed in the office of the clerk of the Circuit Court of the United States for the northern district of Illinois, wherein Joseph H. Wood is plaintiff in error and you, Dion Bourcicault, is defendant in error. to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas Drummond, judge of the Circuit Court of the United States for the northern district of Illinois, this ninth day of December, A. D. 1867.

THOMAS DRUMMOND.

Endorsed: Joseph H. Wood, pl'ff in error, *vs.* Dion Bourcicault. Citation.

214 We acknowledge service of copy of the within citation upon us, this ninth day of December, A. D. 1867.

CLARKSON & VAN SHAACK,
P'ff's Att'ys.

In the Supreme Court of the United States, December term, 1867.

Appeal from the Circuit Court of the United States for the northern district of Illinois.

JOSEPH H. WOOD, appellant,
vs.
DION BOURCICAULT, appellee.

And now comes the said Dion Bourcicault, the appellee, and says that there is no error either in the record and proceedings aforesaid, nor

in the said judgment in manner and form as the same are assigned, and he prays that the said judgment may be affirmed, and that his costs may be adjudged to him, &c.

By CLARKSON & VAN SHAACK,
Atty's for Appellee.

Endorsed: In the Supreme Court of the United States, Dec. term, A. D. 1867. Joseph H. Wood, appellant, *vs.* Dion Bourcicault, appellee. Joinder in error by appellee. Clarkson & Van Schaack, att'ys for appellee.